

MT LEGISLATIVE HISTORY

Chapter 472 1980

Bill H _____ S 142 Original bill & hist. C

H. Committee on Agriculture, Livestock S. Committee on Agriculture, Livestock &

Hearing Date(s) ~~Feb 27~~ ^{^ Irrigation} C Hearing Date(s) Jan 28 C ^{Irrigation}

Mar 13 C

Feb 06 C

Mar 22 C

Feb 11 C

 C

Feb 16 C

Date Out Mar 22 C

 C

Did this bill originate in an interim committee? Yes No

Committee

Report

CHAIRMAN--SEN. PAUL BOYLAN
NORMAL SCHEDULE==> SITE: ROOM 413/415

DAYS: M-W-F

TIME: 1:00 P.M.

SECRETARY-RITA TENNESON

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0004	1/03	1/09	1/21	ADVERSE REPORT		1/23
THAYER, GENE			UCC FINANCING STATEMENT FOR FARM EQUIPMENT CONTAIN MODEL, SERIAL NUMBERS			
SB0046	1/07	1/19	1/21, 1/23	PASS AS AMENDED		1/21
NEUMAN, TED			EXTEND AGRICULTURAL LOAN LINKED DEPOSIT PROGRAM			
SB0102	1/15	1/19	1/21, 1/23	PASS AS AMENDED		1/21
STORY, PETER R.			STATES HOW TO USE VOLUME OR FLOW RATE IN DEFINING AN ADJUDICATED WATER RIGHT			
SB0142	1/19	1/28	2/06, 2-11, 2-16	TIE VOTE		2/16
WEEDING, CECIL			RIGHT OF FIRST REFUSAL ON SALE OF FORECLOSED AGRICULTURAL LAND			
SB0193	1/21	1/28		TABLED		1/30
BOYLAN, PAUL F.			BEEHIVE OWNERS MUST USE ELECTRIC FENCES BEFORE TAKING STOCK-KILLING WILDLIFE			
SB0207	1/24	2/02	2/04, 2/09	TABLED		2/09
LYBECK, RAY			MONTANA QUALITY LABEL AND CERTIFICATION (BEEF)			
SB0238	1/28	2/04		PASS AS AMENDED		2/04
BECK, TOM			VERTEBRATE PEST MANAGEMENT			
SB0268	2/02	2/13		ADVERSE REPORT		2/16
YELLOWTAIL JR, WILLIAM P.			PARTIAL REDEMPTION OF FORECLOSED AGRICULTURAL LAND			
SB0277	2/03	2/09	2/11	PASS AS AMENDED		2/16
HOFMAN, SAM			REVISION OF STATEWIDE MILK POOLING LAW			
SB0278	2/03	2/11		ADVERSE REPORT		2/16
WEEDING, CECIL			ADOPTS THE INTERSTATE COMPACT ON AGRICULTURAL GRAIN MARKETING			
SB0321	2/11	2/13		ADVERSE REPORT		2/16
JERGESON, GREG			PROVIDES FOR VOLUNTARY MEDIATION OF AGRICULTURAL INDEBTEDNESS			

of that total they had to kill 2 bears. They lost between 40 to 50 hives of bees at about \$4000 - \$5000 minimum. Their objections to having to have all these areas fenced is cost. It takes 2 men 4 hours to put up a fence around 100 yards of bees. This entails 50 days labor for two men plus \$30,000 for equipment. If a new neighbor moved in and did not like the bees, or a landowner decides to plow that area, you have to move them and there is a \$300 bear pen which has to be dismantled and put up again.

Senator Beck asked if it was expensive for FWP to trap the bear and move it to another area and would that be a solution for the beekeepers. Mr. Flynn answered that they do this in some instances, or they can kill the bear.

Senator Beck questioned the bill requiring all colonies be fenced. He thought this might be too severe as all areas may not require this. Mr. Flynn said not all yards have to be fenced every year.

Senator Lybeck asked Mr. Barnett how many bears they had killed and he replied that, in 23 years of business, they had only taken 7 bears, which is less than a sportsman would take in that time. They buy a bear license every year.

Senator Lybeck asked what procedure he would go through if he did not have a license and he killed a bear. Mr. Barnett answered that the first thing they do is contact a state or federal trapper who disposes of the bear. Their trapper takes it to the Fish & Game laboratory for research.

Hearing closed on SB 193.

Senator Boylan resumed the chair.

CONSIDERATION OF SB 142: Senator Cecil Weeding, SD 14, told the committee that this bill is pretty well summarized in the title, and is better known as "the right of first refusal". It is new legislation to Montana. Section 1, a new section, includes the definition of agricultural land and foreclosed agricultural land. Section 2 is the "meat" of the bill and the provision for the option to reacquire land that a former owner has lost to foreclosure. Section 3, a new section, is the time limit the person has to act to exercise this option. Section 4 is existing language, amended to define the length of time which must lapse after notice before a transfer is final. Section 5 is the effective date. This bill is a response to the agricultural crisis. It is in existence in

Minnesota, Iowa, Colorado and Nebraska, according to Senator Weeding. The agricultural crisis was more acute there and we are catching up.

If a prior owner is able to match another offer, after he has lost his land, he will have an opportunity to buy this land back. He said people who are caught up are victims of circumstances. Some bought in when prices were high, acquired debt they were unable to cope with and are desirable people to keep in the communities. Investor owned syndicates are moving in and buying up large pieces of land, insurance companies are buying discounted paper, sod buster people are buying large areas, milking the farm programs. These are transient people. The owner-operator land owner is more desirable. Senator Weeding had some amendments to clarify the leasing provision on page 2, lines 4 and 5. Exhibit #3.

PROPOSERS: Monte Mlekush, Northern Plains Resource Council, in favor. Exhibit #4.

Terry Carmody, MT Farmers Union, MT Cattlemans Assoc., said many of the people who are losing their farms are 4th and 5th generation people. Some had bad advice. Some bought at high prices and need this option. He didn't think 60 days to exercise the right would be much of a burden on creditors.

Roy Patte, President, MT Peoples Action, and a farmer from Ryegate, in favor. Exhibit #5.

Tom Breitback, farmer from McCone County, in favor. Exhibit #6.

Jack Hayneman, Northern Plains Resource Council, said he had 20 letters from individuals showing concern and read the letter from the Board of McCone County Commissioners. Letters, exhibit # 7. He asked other proponents to raise their hands. Many hands were raised.

Ed Mott, rancher, Stillwater County, in favor. Exhibit #8.

Mignon Waterman, MT Assoc. of Churches, in favor. Exhibit #9.

Jim Murry, Exec. Scty. MT AFL-CIO, in favor. Exhibit #10.

Mary Kee, Roundup, Musselshell Chapter of MT Peoples Action, in favor. Exhibit #11.

Lyle Manley, Dept. of ST Lands, in favor, but he offered an amendment to except state lands from the effect of the bill. Exhibit #12.

Anne Moylan, MT Catholic Conf., in favor. Exhibit #13.

Larry Martin, farmer, Twin Bridges MT, member of MT Peoples Action, said he was speaking for a farmer who couldn't make his payments so he gave the place back to the insurance company. The insurance company, in turn, gave the lease to the family of a loan agent for the insurance company for \$1.00. This lease included 3,000 acres of farm ground. The family took more than \$100,000 in profits off the land. If the original owner had been able to have first right of refusal, he could have met the loan obligation and kept his whole farming operation intact and not be facing Chapter 11 right now.

Sue Olsen, Roundup, co-chairman of the Musselshell Agricultural Alliance, in favor. Exhibit #14.

Dale Sailer, Superintendent of Schools, Bainville, MT, said he has watched young farm families leave the area because of farming problems, resulting in a loss of students and putting a strain on small schools in MT.

Joan Voise, Ryegate, MT Peoples Action, in favor.

Senator Ray Lybeck, SD 4, on record in support. He gave an example of a bank in Oregon which had been giving special farm management training to new owners to make their farms produce. It didn't work and they are now trying to keep the farms in the hands of the original owners because, by doing so, banks lost a lot less money.

Keith Kelly, Dept. of Agriculture, in favor. Exhibit #15.

Bill Milton, sheep and cattleman from Roundup, in favor.

OPPONENTS: George Bennett, MT Bankers Assoc., opposed. Exhibit #16.

Phil Johnson, MT Bankers Ag. Committee, did not think this was a well drafted bill and that it would not protect the banks nor the investors.

Kim Enkerrud, MT Stockgrowers, opposed. Exhibit #17.

Tim Gill, President, MT Livestock Ag. Credit Bureau, Helena. He was concerned, as a strictly agricultural lending organization, for his shareholders who are also his borrowers. He said this bill is unfavorable to them as viable producers, as it puts them in an unfair trade competitiveness. Credit is

drying up and he knew of only one insurance company who will give long term credit today. He felt it only benefited a few but it affects many.

John Cadby, MT Bankers Assoc., said the laws that were created in the four other states and the incidents stated by the proponents all occurred before the passage of Chapter 12 by Congress last Thanksgiving day. He felt the passage of Chapter 12 made this bill unnecessary as he didn't see why anyone would go through a foreclosure and lose his farm when a chapter 12 would get him a reduction and restructuring of his debt. He felt the right of first refusal was a slim hope of getting the place back.

COMMITTEE QUESTIONS: Senator Jergeson asked Mr. Cadby that, with a farmer's reputation at stake, shouldn't there be other choices. Mr. Cadby said they did not encourage anyone to use Chapter 12 because the borrower gets a reduction of the debt but the lender will have to absorb that loss. The farmer will stay in business under the restructured program and he couldn't see that it would be any more embarrassing to utilize Chapter 12 than it would to go through a lengthy court procedure utilizing Chapter 11.

Senator Jergeson asked what Mr. Cadby's organization has been doing regarding Chapter 12 to get out of the binds they are in. Cadby answered, mandatory mediation, 1st liens for other suppliers and elimination of providing clear title to ag. buyers simply destroys the incentive to make an ag. loan. In the ag. lending business they know if a farmer goes down the tube, so goes the bank.

Senator Jergeson asked how SB 142 added to his risk. Mr. Cadby said the reasons cited by Mr. Gill, Johnson and Bennett were adequate reasons for making the lender more cautious in renewing his loans to the 20,000 farmers they are trying to save. He said they want to make it as easy as possible for the lender to recover his debt.

Senator Bengtson asked if a farmer or rancher took a Chapter 12, could he also take the right of first refusal using the new debt figure. Mr. Cadby said he wouldn't need a right of first refusal in that case because he wasn't transferring ownership of the property.

Senator Beck thought this bill offered false hope and many people may not be able to come up with the dollars to save their farm. Senator Weeding said there will be cases where it won't help but it may help some.

Senator Galt asked how multiple ownership was addressed.

Senator Weeding said it would be the registered owner.

Senator Galt asked about a corporation dissolving. Senator Weeding didn't think they would disband if they were doing something like this.

Senator Galt asked about families with 5 people involved and Senator Weeding said it would be the name on the mortgage instrument. They would operate under the laws of partnership.

Regarding Senator Weeding's amendment, Senator Galt asked if he wanted the lease to go on forever. Senator Weeding answered that the bill puts a limit of 10 years or 5 years on it.

Senator Galt said this would not be the case should an individual foreclose or if the farmer gives the lease to his rich uncle or a bank walks away from it. Senator Weeding said there has to be a legal process to constitute a foreclosure.

Senator Galt said a person could foreclose on another person and wouldn't come under the banking restrictions. If this person wants to lease it, he could negotiate the lease forever. Weeding didn't comment.

Senator Thayer, in reference to Senator Galt's question - should somebody sell the farm under a normal contract for deed, when land prices were higher and wanted to get out of it, then he could purchase it later at a reduced price. Senator Weeding said the new owner establishes the price he is willing to sell it to a third party for.

The committee had concerns about a person losing the place a second time, problems with land values going down, losses that would be incurred if a person who has purchased the land and was losing it had not kept the property up and it was in a rundown condition at the time of foreclosure.

In closing, Senator Weeding said these laws are working in four states. They must have encountered most of the problems the committee spoke of and there may be some technical questions that can be ironed out. He said personal property doesn't enter into this at all. If the third party comes up with more than the former owner can pay, the former owner is out. This bill is similar to Chapter 12 but not as rigid. He said testimony today came from the MT Bankers Assoc., the independent bankers had not testified. Banks are getting out of the ag. loan business. He

Senate Agriculture Committee
January 28, 1987
page 8

felt the bill has merit and he would like to work out the problems in the bill.

Senator Galt asked if Dave Cogley would get a copy of the law from the four states Senator Weeding mentioned.

Hearing closed on SB 142.

There being no further business, the meeting adjourned.


PAUL F. BOYLAN, Chairman

AGRICULTURE

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 1-28-87

NAME	PRESENT	ABSENT	EXCUSED
ABRAMS, Hubert J.	✓		
BENGTSON, Esther G.	✓		
BECK, Tom	✓		
JERGESON, Greg	✓		
KOLSTAD, ALLEN C.	✓		
LYBECK, Ray	✓		
STORY, Peter R.	✓		
THAYER, Gene	✓		
GALT, Jack VICE CHAIRMAN	✓		
BOYLAN, Paul CHAIRMAN	✓		

Each day attach to minutes.

COMMITTEE ON AGRICULTURE

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Che
			Suppo
W. R. Patte	MPA	SB-142	✓
Susan Patte	MPA	✓	✓
Eleanor Wend	PLC	SB-142	✓
Philip B. Johnson	MBA	SB 142	
Tim Gill	Montana Livestock Ag. Credit	SB 142	
Paul Mullen	NARC	SB 142	✓
Dana Milton	Musselshell Ag. Alliance	SB 142	✓
Jim Murray	Mont. AFL-CIO		✓
Joseph Moore	Montana People's action		✓
KEITH KELLY	MT. DEPT. OF AGRICULTURE	TECH. Informati.	

DATE 1-28-87

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Opp
ROBBIE GREEN	NPRC	5142	X	
John Beck	NPRC	5142	X	
Tom Tully	NPRC	5142	X	
Richard BERLO	SEIC	5142	X	
Bill Gillen	NPRC	5142	X	
Paul Chapman	Doll	5142	X	
Terry Kennedy	St. Francis L	5142	X	
Anne Morgan	Mont. Cath Conf	5142	X	
Margaret Waterman	Mont. Assoc. of Churches	50142	X	
John Braxton	Mt. Catholic Conf.	142	X	
Sandy Chaney	Women's Lobbyist Fund	5142	X	
Joan Martin	MFA	SB142	X	
Jim Flynn	FNP	SB143	X	
Dale Sullivan	Bearwith School	SB142	X	
Shirley BALE	Wash. - Palmer	SB142	X	
Mike Lee	Mt. Catholic Conf.	SB142	X	
Joan Noe	Mt. Catholic Conf.	SB142	X	

(Please leave prepared statement with Secretary)

PROPOSED AMENDMENTS - SB 142

Page 2, lines 4 and 5.
Section 2 (2)

An offer to lease to the former owner is required each
time the terms of the lease are renegotiated foreclosed
~~agricultural-land-is-leased-to-a-third-party.~~

SENATE AGRICULTURE
COMMITTEE NO. 3
DATE 1-28-87
BILL NO. SB 142

Mr. Chairman, members of the committee. I'm Monte Mlekush, testifying
on behalf of the Northern Plains Resource Council. NPRC is a
grassroot membership based organization working on natural resource
and agricultural issues. I'm here today to testify in support of
SB 142.

The intent of this legislation is to give people who have lost
their operation the opportunity to meet a third party bid for the
lease or purchase of their foreclosed land.

For instance, if I lost my place and the creditor accepted a third
party bid, I would have the opportunity to match the same terms and
conditions of that bid. According to SB 142, I would have 15 days
to match a lease agreement and 60 days to match "bid" for purchase.

Opponents claim this legislation will put the so called "bad managers"
back into business. We must recognize that "bad managers" are a
symptom of a larger problem within the industry. We must also recognize
that in order to use this specific legislation, the ability to
match a third party bid is absolutely dependant on access to capital.

We believe that only the best operators will be able to use this
legislation. "Bad managers" will be weeded out simply because they will
not be able to secure further financing.

We're familiar with arguments claiming that this legislation will
"dry up" credit. That argument has been so frequently used over the
last two years, that we're reminded of the parable of the boy who
cried wolf. We challenge those individuals to fully explain the
facts in fact for using that argument.

SENATE AGRICULTURE

SENATE NO. 4

DATE 1-28-87

BILL NO. SB 142

SB 142 is just one tool to assist troubled farmers and ranchers and to help stabilize rural communities. The financial community has been considered by the favorable passage of SB 59. Now is the time to give the same consideration to the agricultural community.

Thank you for your consideration of SB 142.

Right of First Refusal

Senators, Members of this Committee, Ladies and Gentlemen, :

My name is Roy Patte, President of Montana Peoples' Action and a farmer from Ryegate, Montana.

You as well as we farmers and ranchers are aware of the economic situation of agriculture in this State and the nation as a whole. This applies to the city and urban people as well. As you know, the principal industry of this State is agriculture. What happens in agriculture has a direct bearing and relationship to all of us in our cities, towns and urban areas of Montana.

The escalation of foreclosures and forced liquidation of farms and ranches in this state has placed a heavy burden, physically and especially mentally on those of us in the rural areas. The crosses on the front lawn of our Capital is a daily reminder of what is happening in agriculture every day and every week.

Lending agencies, banks, Farm Credit Services, FmHA, have been very reluctant to advise borrowers of their rights. Many foreclosures and forced liquidation could have been prevented by ag counseling or mediation, or both. These programs will be extremely essential in the next year or two.

In most cases, the lender has acted in bad faith. Some examples are -

1. The lender has given extensive advise not related to the collateral for the loan or the farmer's ability to repay the loan,
2. Consistently renews loans, then suddenly severs credit.
3. Is dishonest with the borrower, such as telling the borrower the loan is due when it is not,
4. fails to follow its own procedures when acting on a loan;
5. Does not follow the terms of the note, or violates State or Federal law when trying to collect on the loan.
6. Having the borrower sell machinery, cattle, production, etc. to make payments due and then advising the borrower the lender will then provide the necessary finances to continue his operation. Then denying any loans because of little or no collateral.

RECEIVED
1-28-87
5B142

These are just a few of the tactics that have been used against borrowers in my area of the State that I am aware of. These same tactics and many others have been and are being used throughout this state to cause foreclosure or liquidation of personal property, real estate, farms and ranches.

We have amongst us people that have been through these situations with lenders. The actions, attitudes, and heartache that people have had to contend with can only be addressed by them personally. I ask you to listen to them when they give their testimony. Only they can describe the hardships they have had and the consequences they are still experiencing.

In a large number of foreclosures by the lender, the same property is offered to another person at a greatly reduced price, if sold, reduced lease arrangement or considerably less interest than what the original owner had to provide, in payments, interest or lease arrangements.

Why shouldn't the original owner be given these same consideration? He knows the land better than anyone else, the highest productive area, the poorer production areas, the best husbandry techniques, and of course his home.

Consider the financial savings to lenders by giving the owner the first right of refusal. Consider too, the tax dollar revenue that the counties could receive by personal property and real estate taxes. Consider the impact loss to communities and rural areas, as well as the increased suicide rate among farmers and ranchers, wife abuse, child abuse, drinking, etc.

Why wait until the 12th hour. Lets get our heads out of the sand and take a look at reality. If we try, we can accomplish something beneficial to all. Acts and Legislation was passed in the depression years to protect the rights of the landowner. It was done then and can be done again. Using our enabled rights and God given rights we can succeed together.

I urge you to support and pass SB-142 THE FIRST RIGHT OF REFUSAL.

4

I am Tom Breitbach and I farm and ranch in McCone County

I wish to thank the agriculture committee for the opportunity to testify on SB142

I am not an attorney, but we have had to reclaim property through the foreclosure method. Very briefly I will tell how I think the process works and how this process is affected by SB142

1. Failure of debtor to make timely payments on debt
2. Filing of claim by seller or financial institution
3. Court order that plaintiff has a judgement to enforce
4. Execution of judgement by sheriff
5. Issue of court deed to plaintiff
6. Offer by third party to lease or buy
7. At this point SB142 comes into effect
8. Original debtor has the opportunity to meet the offer for purchase once and once only
9. Each time the lease terms are changed the original debtor has the right to meet the offer
10. This in no way inhibits the present owner from rewriting the terms of the lease. It simply means that they must provide the original owner and a third party with the same terms



McCone County

Circle, Montana

- 59215 -



COMMISSIONERS

Lyle Quick
Melvin Skyberg
Chuck Kleppelid
Box 199
485-3505

January 27, 1987

ASSESSOR

Mari Youngkin
Box 179
485-3565

Senate Agriculture Committee
Paul Boylan, Chairman

CLERK & RECORDER

Paula L. Kuntz
Box 199
485-3505

RE: SENATE BILL NO. 142

Dear Committee Members:

CLERK OF THE COURT

Betty L. Robinette
Box 208
485-3410

The Board of McCone County Commissioners would like to take this means to express our support for Senate Bill No. 142.

COUNTY ATTORNEY

Arnie A. Hove
Box 184
485-2952

We feel that the original landowner should have first right to accept or reject any offer made to a third party.

COUNTY HEALTH DEPT.

Mae Rittal PHN
Pauline Wischmann PHN
485-3425

Thank you for your consideration.

Sincerely yours,

COUNTY PLANNER

Mary Garfield
Box 199
485-3505

McCone County Commissioners

Lyle Quick
Lyle Quick, Chairman

JUSTICE OF THE PEACE

Gene LaRowe
Dianche Elverud
485-3548

Chuck Kleppelid
Chuck Kleppelid, Member

SHERIFF

Robert A. Jensen
Box 207
485-3405

Aron King
Aron King, Member

TREASURER/ SUPT. OF SCHOOLS

Kay H. Wolff
Box 180
485-3590

LQ:plk

STATE ARCHIVES

BOOK NO. 7

DATE 1-28-87

FILE NO. SB142

Box 1388

Glendive, Mont.

Jan. 24, 1987

Chairman, Paul Boylan

Vice-chairman, Jack Galt

Senate Agriculture Committee

Montana Legislature

Helena, Mont.

Dear Senator Boylan, and Senator Galt:

Please give your support to SB 142--The Right of
First Refusal.

This bill is one which gives to those farmers
and ranchers whose property has been foreclosed, a
chance to remain on their land and to make a comeback.
You are well aware of the status of farmers in this
state. It is well worth your favorable consideration.

Sincerely,

Louise Cross

(Mrs. J. M. Cross)

SENATE AGRICULTURE
CURRENT NO. 7
DATE 1-28-87
BILL NO. SB142

Jan 24, 1987

Hallon, Mont 59326

Hi Meg.

We would appreciate if you take my letter to the hearing in the Senate as on Jan 28.

We would like to see Senate Bill 142 passed. We have read the bill and feel it is fair to both the lender and former owner.

Sincerely.

Don & Irene Moffett

7
1-28-87
BILL NO. SB 142

Box 1388
Glendive, Mont.
Jan. 24, 1987

Chairman, Paul Boylan
Vice-chairman, Jack Galt
Senate Agriculture Committee
Montana Legislature
Helena, Mont.

Dear Senator Boylan, and Senator Galt:

Please give your support to SB 142--The Right of
First Refusal.

This bill is one which gives to those farmers
and ranchers whose property has been foreclosed, a
chance to remain on their land and to make a comeback.
You are well aware of the status of farmers in this
state. It is well worth your favorable consideration.

Sincerely,
Louise Cross
(Mrs. J. M. Cross)

*Copy -
Sen. Hugh Abrams*

FILED
JAN 27 1987
SEN. 7
DATE 1-28-87
FILE NO. SB 142

1-26-87

Ronald Jarwood
South Star, Box 215
Rashua, Mt. 59248

785-4781

Senate Ag Committee

My name is Ronald Jarwood and I would like to give written testimony. I am a farmer from Rashua in Valley County. We, as farmers and Ranchers are going through tough times with low commodity prices and depreciating land values. We need to pass Senate Bill 142 (The Right of First Refusal) so that a farmer or rancher that has been foreclosed on by a lender, can stay on the land by having a chance to match the best offer by a third party.

The right of first refusal has already been passed in Colorado, Minnesota and Iowa. We need this bill passed here in Montana. So I ask you on the Senate Ag Committee, to pass SB 142.

Sincerely
Ronald Jarwood

7
1-28-87
SB 142

TO WHOM IT MAY CONCERN

I support the Right For First Refusal Bill for all
Lending Agencies. The FMHA already gives the Right of
First Refusal to foreclosed borrowers.

Jed Tihista

Jed Tihista
HC 67 Box 152
Nashua, Mont. 59248

7
DATE 1-28-87
BILL NO. SB 142

Senate Ag Committee
Helena, Mont.

We wish to express our sup-
port for SB 142. and strongly urge
you to pass the bill, giving a
foreclosed farmer or rancher the
right of refusal.

Thank you.

Arthur Neubauer
Helen Neubauer
Rt 1- Box 4069
Glasgow Mt 59230

U. S. GOVERNMENT

LEGISLATIVE NO. 7

DATE 1-28-87

BILL NO. SB 142

Jan. 26, 1987

Senate Ag. Committee,

I am a farmer from Nashua in Valley County, Montana. This is my written testimony for Senate bill 142.

^{lenders} I just could be that the were as much at fault as the borrower, because of once inflated land prices and interest rates. Now, land prices going down and also interest rates, the fellow being foreclosed on should have the right of first refusal.

I am in favor of SB 142 being passed.

Sincerely,

Edgar Garwood
South Star Route BOX 212
Nashua, Montana

Phone 785-4871

DATE 1-28-87
BILL NO. SB 142

ROBERT A. POTTER
923 - VALLEY VIEW
GLASGOW, WIT 59230

TO AG COMMITTEE MEMBERS -

I URGE YOU TO VOTE FOR SB 142.

IF THE FARMERS LOSE THEIR PLACE BECAUSE
OF HIGH LAND PRICES, & LOW COMMUNITY PRICES
AND HE HAS BEEN WORKING HARD TO SAVE HIS
FARM ~~AND~~ I FEEL THAT HE IS ENTITLED
TO BUY HIS FARM BACK AT A PRICE AND
TERM & CONDITIONS OF HIGHEST OFFER -

Sincerely

Robert A. Potter

FILED
JAN 28 1937
DATE 1-28-37
BILL NO. SB 142

Dear Senators:

1-27-87

Please consider this letter of support for SB 142.

In these times of great difficulty, not only for our farmers & ranchers, but also for the rural towns & communities that if they support, we need some stabilizing influences. SB 142, by giving the occupying operator the opportunity to meet the terms of a lease or sale, that the financing institution may be offering a 3rd party, will help stabilize the tumultuous situation we are witnessing in our rural economy.

Montana & Montanans stand only to lose & not gain by an exodus of our people from the land & the surrounding rural communities. As we are witnessing here in Circle most of the dislocated are not simply moving to Billings or some other larger Montana urban center, they are leaving for Arizona, Georgia & other hopefully more economically opportune areas.

By supporting SB 142 I believe you can help to bring stability to our hard hit state.

Thank you for your consideration,

Jerry Schilling

Box 147

Circle, MT.

1-28-87

SB 142

Pl. # 485-2479

January 26, 1987
Box 406
Nashua, Montana 59241

Montana Senate Ag Committee
Capitol Building
Helena, Montana

Dear Senate Ag Committee:

This letter is written in support of SB 142. Allowing a foreclosed farmer the right to buy, rent or lease his foreclosed property if they are able to match the best offer the foreclosing lender would get for the property from a third party would help keep the farmers on the land. We are in favor of the right of first refusal.

The States of Iowa, Minnesota and Colorado already have laws allowing farmers and ranchers the right of first refusal. Let's do the same and help our rural people in the State of Montana keep their homes and land.

Very truly yours,
Kenneth D. Turner
Margaret P. Turner

7
DATE 1-28-87
BILL NO. SB 142

Jan. 26, 1987

We feel that the Rancher should definitely be given 'first refusal' on this land that is being foreclosed on. We would like to see the continuance of small farms. The original owner is the person who has put all of his life into the land and has also paid much interest on his loan, and he should be given the chance to continue farming at the current value of his land.

This would also stabilize the economy and Tax base

Norma C. Bell
Dare, N.C.

7
1-28-87
SB 142

To: Senate Ag Committee

We feel that SB 142,
The right of first refusal, should
be made law in Montana.
This would give a borrower
the opportunity to stay on the
land, and keep him out of an
already depressed job market.

Thank you
Mel & Linda Novak
Washua, Mt 59248

SENATE COMMITTEE
7
FILE 1-28-87
BILL NO. SB142

January 26, 1987

To the members of the Senate Agriculture Committee:

Many farm borrowers are now unable to make payments on loans which were based on inflated land values.

However, they might be able to make it if their payments were based on current land values or the current market value of commodities. SB 142 will allow some borrowers to operate at a lower loan level because their payments would be based on the deflated value of their collateral.

It would give the farm borrower the option of matching a third party bid to buy or lease all or part of his land -- a bid which would be based on current market values. Also, if a lender knew that he would have to allow me to try to match a third party offer for some or all of my foreclosed property, he might think twice about going through the cost of foreclosure and work something out with me beforehand, like refinancing my loan.

I strongly urge you to vote yes on SB 142.

Arthur J. D. Neiffer

Art Neiffer, JR. AGRICULTURE
CB Route 7
Glendive MT 59330
DATE 1-28-87
BILL NO. SB142

Jan. 26, 1987

Sen. Paul Boylan:
Capitol Station
Helena, Mt. 59820

Dear Senator:

Since I am unable to travel the 250 miles to attend the hearing to testify on SB 142, I would like to let you know that we believe this bill is essential to keep farm land available to farmers if and when agriculture prices and economics improve. If the present trend is continued, the majority of Montana land will be held by speculators who will make the farming community a transient tenant population without regard for the well being of the land or future.

Please do what you can to get this bill passed so the farmer foreclosed on will have a chance to buy, rent or lease back at the present rates what he lost due to inflated prices. It is a chance to show our basic economic base they will have some protection.

Sincerely,

Nell Kubech

Mrs. John E. Kubech, President
Dawson Resources Council
Bloomfield Rt., Glendive, Mt. 59330

*Originals
sent to Esther Benton
Hugh Abrams*

SENATE AGRICULTURE

EXHIBIT NO. 7

DATE 1-28-87

BILL NO. SB142

Senator Hubert L. Abrams
Montana Legislature
Capitol Station
Helena, Montana 59620

RE: Senate Bill No. 142

January 25, 1987

Dear Senator Abrams,

As members of Dawson Resource Council and landowners in Dawson County, we urge you to support Senate Bill 142 entitled "An act to give the prior owner of foreclosed agricultural land the right to purchase or lease such land by meeting the terms and conditions of the highest offer made to purchase or lease such land; amending Section 25-13-710, MCA; and providing an immediate effective date."

We feel that the owners of foreclosed land and/or equipment should have an opportunity to re-construct their lives while still maintaining the concept of the family farm and possible eventually being able to re-establish themselves in the lifestyle of a farm family again. To lose one's land because over extending themselves in purchasing equipment and supplies and have the equipment sold by financial institutions at an amount much lower than their worth is devastating. To compensate, the institution then takes the land.

We would like to see some sort of legislation enacted that the foreclosed land cannot be purchased by brokers for out of state corporations or for foreign business corporations. The foreign and out of state ownerships of land not only take out the tax base but also take our tax money through farm subsidy programs and pay no federal, state or local taxes.

Thank you for your attention in this matter. Urge you to support Senate Bill 142.

Sincerely,

Donald and Betty Shearer

Donald and Betty Shearer
411 So. Taylor Ave.
Glendive, Montana 59330

CC: Hubert Abrams

7
1-28-87
SB 142

1-26-87

We think that the farmers and ranches should have the right to meet the price of the person that is planning to buy your ranch. It would be better for the country or community to have more people out on the land. It would also help local business and help create a better tax basis for state and local areas and stabilize the economy. The refusal law will be a good one.

Julius Bretsch
Earl Bretsch
Box 146
Genesee, Wt. 59241

and the potential is there.

7
1-28-87
30142

my name is Ed Mott. I am from Reed Point.
Where we are now is in a friendly foreclosure.
We are trying to work thro a negotiation to
come up with a reasonable lease back.

The right of first refusal would do us some
good. I also feel it is moral + fair and does not
~~unduly~~ ^{BURDEN} ~~impose~~ the lender.

In my own case, I have a fear of a sweetheart
deal coming down ~~that states as fact~~ where
lenders would take advantage for a relative
or another they have business connections with.
SB 142 would ~~do a lot~~ help keep things honest.

In our area, in a 5 mile radius, I am
aware of at least 9 other operators besides
ourselves who ~~over~~ have either been
foreclosed, in the process of foreclosure,
for sale, or a portion of the place is for sale in
order to stay in business. With all we've put
in and all we've lost, haven't we earned
the right to at least meet a 3rd party bid.

I would be willing to answer any questions
~~of a general~~ the committee might have about my
operation.

LIVESTOCK AGRICULTURE

EXHIBIT NO. 8

DATE 1-28-87

BILL NO. SB142



January 28, 1987

WORKING TOGETHER:

American Baptist Churches
of the Northwest

American Lutheran Church
Rocky Mountain District

Christian Church
(Disciples of Christ)
in Montana

Episcopal Church
Diocese of Montana

Lutheran Church
in America
Pacific Northwest Synod

Roman Catholic Diocese
of Great Falls-Billings

Roman Catholic Diocese
of Helena

United Church
of Christ
MT-N.WY Conference

United Methodist Church
Yellowstone Conference

Presbyterian Church (U.S.A.)
Glacier Presbytery

Presbyterian Church (U.S.A.)
Yellowstone Presbytery

SENATOR BOYLAN AND MEMBERS OF THE SENATE AGRICULTURE
COMMITTEE:

I am Mignon Waterman of Helena and I represent the
Montana Association of Churches.

The Montana Association of Churches supports SB142
because we believe it will provide Montana farmers
an opportunity to buy or lease back their property
after it has been liquidated.

The Montana Association of Churches supports public
policies at the state level that will help preserve
the family farm system and the vitality of rural
communities. We believe the right of first refusal
is such a policy.

We urge this committee to support SB142.

SENATE AGRICULTURE

EXHIBIT NO. 9

DATE 1-28-87

BILL NO. SB 142



Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

TESTIMONY OF JIM MURRY ON SENATE BILL 142 BEFORE THE SENATE AGRICULTURE,
LIVESTOCK AND IRRIGATION COMMITTEE, JANUARY 28, 1987

Mr. Chairman, my name is Jim Murry and I'm here today on behalf of the Montana State AFL-CIO to testify in support of Senate Bill 142.

We support this bill because the farmers, ranchers and workers of this state have a common heritage. This common heritage is based on a strong work ethic, a belief in social and economic fairness, and a belief in the protection of the rights of individuals.

Montana is confronted with a financial crisis. Every basic industry (agriculture, minerals, timber, oil and gas) in our state is in decline. The state's budget deficit, the high unemployment, the loss of population and tax base are all symptoms of the basic underlying problem, which is a depression in our natural wealth industries.

Montana is an agricultural-based state. Agriculture is the largest industry in Montana. The secondary industries that service agriculture provide jobs and income for many more Montanans. The economic condition of agriculture is directly linked to the overall strength of our state's and nation's economy. In simple economic terms, we cannot afford to lose our farmers.

The question that is being addressed by this Montana Legislature is not just one of how to increase revenue or decrease expenditures. It is not just a question of what type of new tax should be imposed on the people of our state, nor is it only a question of which service or program the economically disadvantaged really don't need. A major question that this legislature, and this committee, must answer is: Are we going to fight for the survival of rural America?

If we choose not to act, the trend toward corporate and institutional ownership of our land, which has already started, will become the basis of Montana's agriculture industry. Montana already has had enough experience with the type of social and economic implications arising from out-of-state ownership.

Senate Bill 142 is not the answer to all of the problems in agriculture, but it is a step in the right direction, and it is a step that can be made here at the state level. The "right to first refusal" simply allows the original owner of a piece of property the opportunity to buy, lease or rent their foreclosed property at the price which the lending institution is willing to sell the property to a third party. Adopting the right to first refusal will help keep our family farmers on their land.

SENATE AGRICULTURE

EXHIBIT 10

DATE 1-28-87

BILL NO. SB 142

Senate Bill 142 is not a give-away. It does not create additional costs for the lending institution that is selling the property. It does not cost the state anything. The original owner can only purchase the property if he or she can arrange financing.

We urge you to vote for Senate Bill 142. A vote for this bill is not only a vote for our farmers and ranchers, but it also is a vote for rural America. It tells the people of this state that even though Montana and its financial problems have been largely ignored by the administration in Washington, D.C., the legislators we have elected have not.

We hope you agree with our position and vote for Senate Bill 142.

MONTANA PEOPLES ACTION

208 E. Main
Missoula, MT 59802
(406) 728-5297

436 N. Jackson
Helena, MT 59601
(406) 449-6597

Members of the Legislature and fellow Montanans,

I am Mary Kee of Roundup, Montana and represent the

Musselshell Chapter of Montana People's Action.

I am here in support of SB142. The Federal Land Bank has offered our place to a neighbor, verbally at \$50 Per acre, This is only 40¢ on the dollar of what is was sold for at sheriff's sale September 11th, 1986.

My husband Dan and I have spent over 30 years building a registered Angus Ranch. The Farm Credit System has forcefully sold us out and denies our right of possession for one year.

The right of first refusal will give us a chance to remain in agriculture.

Mary Kee

SENATE AGRICULTURE

FILED IN 11

D. 1-28-87

BILL NO. SB142

48

Mortgagee in Escrow

TESTIMONY FOR SB 142

(January 28, 1987 413/415 1:00 P.M.)

After reading SB 142 it was uncertain to the Department of State Lands how the Bill would affect school trust lands that are currently being leased for agricultural purposes. At the present time many of these leases are mortgaged by the lessee. On occasion the mortgage companies will foreclose on the mortgage and become the lessee of record. Oftentimes this is accomplished by placing an assignment, signed by the lessee, in escrow, and upon foreclosure, the assignment is presented to the Department of State Lands. The Department must then approve the assignment.

SB 142 seems to say that the state land must be offered to the former lessee by the mortgage company. However, under current state law governing the management of state lands, the mortgage company can not allow the former lessee to farm the land unless there is an approved assignment or sublease. SB 142 does not seem to account for this requirement as presently written. Therefore, in order to keep the two sets of laws consistent, the Department offers this amendment to exempt school trust lands.

SENATE AGRICULTURE

EXHIBIT

DATE

BILL NO.

12

1-28-87

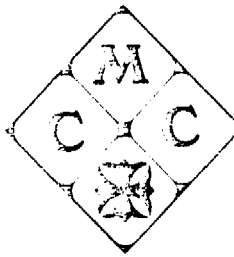
SB 142

Amendment to SB 142; Introduced Bill - White Copy

1. Page 2.

Following: line 8

Insert: "(4) This section does not apply to foreclosed agricultural land if such land is owned by the state pursuant to Montana's Enabling Act (Act of February 22, 1889, ch. 180, 25 Stat. 676)."



Montana Catholic Conference

January 28, 1987

CHAIRMAN BOYLAN AND MEMBERS OF THE SENATE AGRICULTURE COMMITTEE:

My name is Anne Moylan. I am an intern representing the Montana Catholic Conference. The Montana Catholic Conference serves as the liaison between the two Roman Catholic Bishops of Montana in the matters concerning public policy.

As stated in the most recent U.S. Bishops' Pastoral Message and Letter, the loss of a farm and being forced to leave the land is a tragic experience. It often means the sacrifice of a family heritage and a way of life. Once farmers sell their land and equipment, their move is practically irreversible. The costs of returning are so great that few who leave ever come back. ...Society should help those who would and could continue effectively in farming.

Because Senate Bill 142 offers Montana farmers an opportunity to continue in farming, the Montana Catholic Conference urges the committee to support this bill.

SENATE AGRICULTURE

EXHIBIT NO. 13

DATE 1-28-87

BILL NO. SB 142



Tel. (406) 442-5761

P.O. BOX 1708

530 N. EWING

HELENA, MONTANA 59624

50

Mr. Chairman, members of the committee
and gentlemen

I'm Sue Olson co-chairman of the
Missoula Agricultural Alliance, an organization
of farmer, ranchers, towns people working
to keep agricultural operators and rural
communities intact. I am here today
to support SB 142.

I feel that in order for our rural
communities to survive we must keep
our family farmers and ranchers on the
land.

This bill is beneficial for both
borrowers and lenders. It gives ^{foreclosed} farmers
and ranchers an opportunity to get back
into business - if, and only if, they can
match a 3rd party bid. Lenders are
sufficiently protected because they can
write terms and conditions of the 3rd party
bid. Competitive bidding can ~~income~~
~~income to the lender~~, ~~only~~ only
be helpful to the lender in securing a
higher bid for the land.

SENATE AGRICULTURE

EX. BILL NO.

14

DATE

1-28-87

BILL NO.

SB 142

It is imperative that the

~~this is only one bid if many to help~~
~~the agricultural community to regain~~
stability. ~~this bill is one of many that~~
and I urge your support for
S.B. 142.

Exhibit # 14



TED SCHWINDEN
GOVERNOR

STATE OF MONTANA
DEPARTMENT OF AGRICULTURE

OFFICE OF THE DIRECTOR
AGRICULTURE/LIVESTOCK BLDG.
CAPITOL STATION
HELENA, MONTANA 59620-0201

TELEPHONE:
AREA CODE 406
444-3144

KEITH KELLY
DIRECTOR

TESTIMONY OF MONTANA DEPARTMENT OF AGRICULTURE
DIRECTOR KEITH KELLY
FOR THE SENATE AGRICULTURAL, LIVESTOCK, AND IRRIGATION COMMITTEE
ON SENATE BILL 142
WEDNESDAY, JANUARY 28, 1987
HELENA, MONTANA

Chairman Boylan, members of the Committee. The Montana Department of Agriculture is here to provide technical information .

Agricultural foreclosures are increasing in Montana as the agriculture crisis deepens. Studies such as that of the American Bankers Association and the Montana Farm Finance Summary, conducted by the Montana Department of Agriculture, indicate that our financial problems in Montana are among the worst in the nation and will continue for some time. Continued land devaluation and inadequate cashflow are compounding the magnitude of the financial stress. These problems put continued stress on the farmers and ranchers as well as lenders in the state. These stress factors have also had a serious impact on the availability of agricultural credit, thereby reducing the number of potential buyers of agricultural land.

The Department of Agriculture is currently completing the 1986 Montana Farm Finance Survey. We hope to have survey results compiled and available for your review within the next ten days.

SENATE AGRICULTURE

EXHIBIT NO. 15

DATE 1-28-87

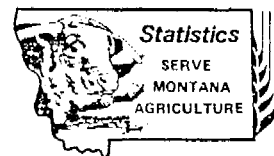
An Affirmative Action/Equal Employment Opportunity Employer BILL NO. SB142

52



(406) 444-3144

1985 FARM FINANCE REPORT



(406) 449-5303

FEBRUARY 1986

Drouth and low farm prices have continued to depress Montana's agriculture. Wheat production during 1985 was the lowest since 1939 and heavy livestock liquidation has reduced the cattle herd to the lowest count in 23 years. Low farm income has depressed land values and further stressed farm and ranch finances. These conditions have also impacted the rural community and the farm credit system. This report provides an update to a farm finance survey conducted in October of 1984. It provides a measurement of the financial status of Montana farmers and ranchers throughout the 1985 calendar year.

SURVEY PROCEDURE

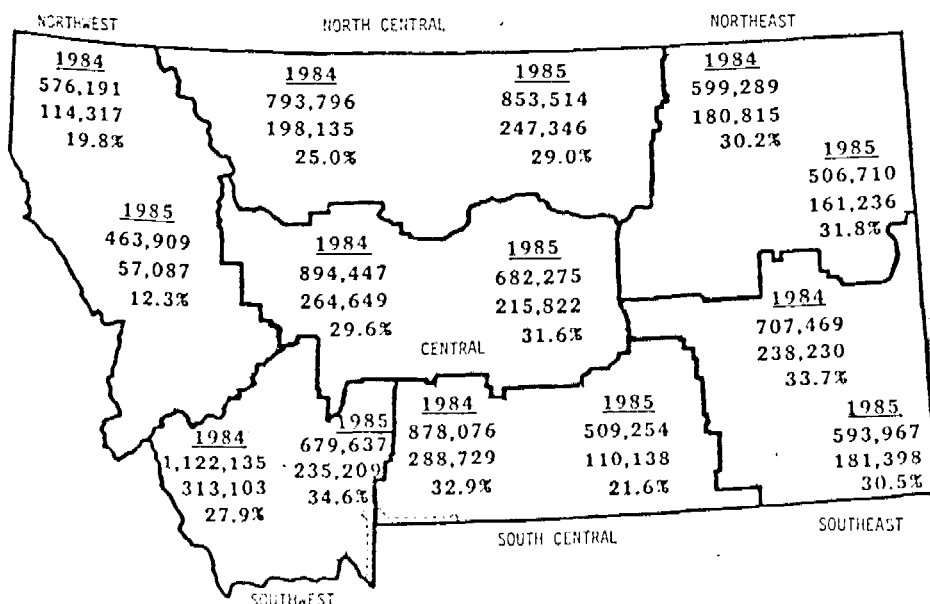
Most of the questions asked in this year's survey were designed to measure financial status using standard statistical indicators similar to the 1984 survey. Additional details about assets and debt were asked this year to improve the accuracy of those figures. Questionnaires were mailed to 1289 farmers and ranchers selected randomly by size of operation. Mail returns totaled 285 or 22% of those surveyed. An additional 398 questionnaires were completed by telephone from a sample of those not responding by mail.

DEBT TO ASSETS UNCHANGED

Results of the 1985 survey show the Montana debt to asset ratio at 27.8%--virtually unchanged from the 28.2% ratio reported in 1984. The debt to asset ratio is a standard measure of economic health used in financial analysis. It means the average farm debt in Montana was 27.8% of average farm assets.

Total assets averaged \$623,844 per farm or ranch, down 19% from 1984, for a statewide reduction of \$3.4 billion. Debt per operation also declined, averaging \$173,563, down 20%, resulting in a total drop in net worth to Montana agriculture of \$2.3 billion--down 18%. Based on crop and livestock inventory reductions, it appears assets have been sold off to pay off debt. Respondents seemed to have difficulty appraising the value of their real estate. Many are hesitant to accept reductions that are indicated by distressed sales and prefer to keep an optimistic balance sheet. Adopting lower land prices would result in even higher debt to asset ratios.

AVERAGE FARM ASSETS, DEBT, and DEBT/ASSET RATIO, 1984 & 1985



1984
(414 Reports)

Assets	769,114
Debt	216,854
Ratio	28.2%

1985
(561 Reports)

Assets	623,844
Debt	173,563
Ratio	27.8%

RESTATE AGRICULTURE
EXH. NO. 15
DATE 1-28-87
BILL NO. 50142

A look at debt to assets by crop reporting district shows conditions have improved in northwest, south central, and southeastern areas while conditions have deteriorated in north central, northeast, central and southwestern areas. Producers in the southwest now have the highest debt to asset ratios. In that area 25% have had loan applications turned down and 73% of those have been unable to get credit elsewhere. Statewide, 15.6% have had loan applications turned down and 53.4% of those were unable to obtain credit elsewhere.

MONTANA FARM NUMBERS, ASSETS, and DEBT COMPARISONS

YEAR	NUMBER OF FARMS	AVG. VALUE PER ACRE	AVG. FARM ASSETS	AVG. TOTAL DEBT	DEBT/ASSETS RATIO
		(Dollars)	(Thousand Dollars)		(Percent)
1979	23,700	196	677,004	118,873	17.6
1980	23,800	235	842,983	151,302	17.9
1981	23,900	251	887,029	167,657	18.9
1982	24,000	271	862,250	179,542	20.8
1983	24,000	259	873,125	186,458	21.4
1984	23,900	264	757,322	180,000	23.8
1985	23,600	222	623,844*	173,563*	27.8*

SOURCE: 1979-1984 from: USDA, Economic Research Service

*Survey of Montana Farmers, February 1986.

DELINQUENCY RATE UP

The delinquency rate on real estate loans has increased. From 18% in 1984 to 24% in 1985. Operating loan delinquencies went from 31% to 33%. A closer look shows both real estate and operating loan delinquencies were much higher for operations smaller than 3,000 acres.

Sixteen percent had loan applications turned down, but nearly half of those obtained credit elsewhere.

LOAN DELINQUENCY RATE BY SIZE OF FARM

SIZE OF FARM	REAL ESTATE LOANS DELINQUENT		NON-REAL ESTATE LOANS DELINQUENT	
	1984	1985	1984	1985
-Acres-	-----Percent-----			
499 or Less	25.0	21.5	31.8	36.7
500-999	28.6	39.3	37.5	34.5
1,000-1,999	14.3	25.3	24.5	41.9
2,000-2,999	18.8	29.5	34.1	39.0
3,000-4,999	13.6	18.9	32.1	19.6
5,000-9,999	8.6	19.5	31.8	19.0
10,000 +	12.7	18.5	28.3	28.2
STATE TOTAL	17.6	24.1	30.6	32.7

OVER HALF WON'T SURVIVE OVER 5 YEARS

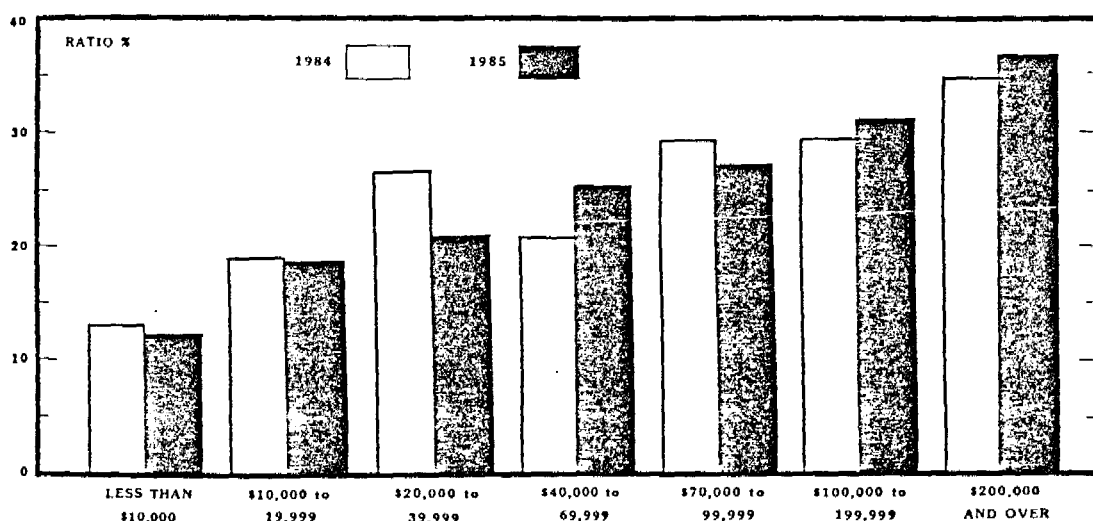
Given current trends in farm income and expenses, 51.5 percent of Montana producers said they would quit farming in five years or less. Forty-two percent said they could continue until retirement--down from 48% in 1984. Economic conditions are especially bad in the southwest where 82% would quit in five years. In the northeast two-thirds said they wouldn't survive.

MONTANA FARM FINANCE BALANCE SHEET BY AGE OF OPERATOR

AGE CATEGORY OF OPERATOR	NUMBER OF REPORTS		DEBT TO ASSET RATIO AVERAGE		FARM ASSETS AVERAGE		FARM DEBT AVERAGE	
	1984	1985	1984	1985	1984	1985	1984	1985
	--Percent--				-----Dollars-----			
24 or Less	2	2	35.1	42.0	1/	1/	1/	1/
25 - 34	50	54	35.9	32.1	855,443	490,589	307,429	157,432
35 - 44	65	119	32.1	37.0	837,180	635,967	269,033	235,479
45 - 54	102	124	37.2	32.9	762,777	718,591	283,717	236,586
55 - 64	138	163	20.3	24.9	787,887	647,467	159,969	161,006
65 +	57	94	16.7	12.0	568,179	517,177	94,816	62,255
STATE TOTAL	414	556	28.2	27.8	769,114	620,820	216,854	173,701

1/ Information withheld to avoid disclosure of individual data.

MONTANA DEBT TO ASSET RATIO BY GROSS FARM INCOME, 1984 & 1985

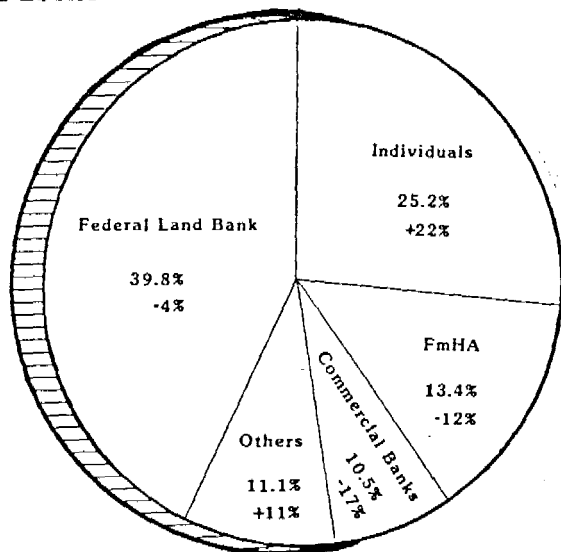


MONTANA FARM FINANCE BALANCE SHEET BY DEBT/ASSET RATIO

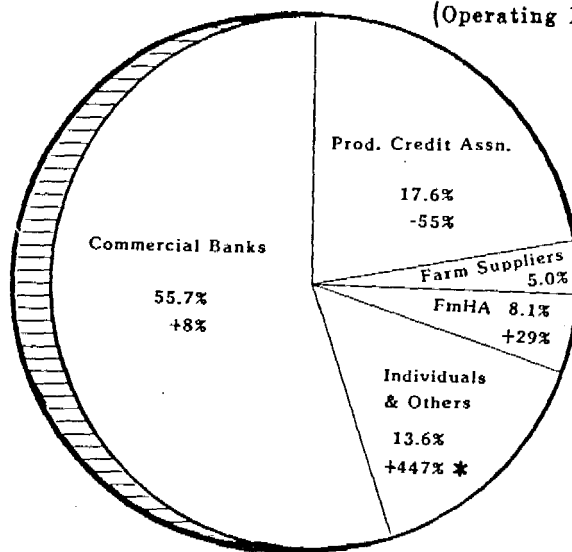
DEBT/ASSET RATIO CATEGORY	NUMBER OF REPORTS		DEBT TO ASSET RATIO AVERAGE		FARM ASSETS AVERAGE		FARM DEBT AVERAGE	
	1984	1985	1984	1985	1984	1985	1984	1985
	--Percent--				-----Dollars-----			
0	77	112	0	0	573,702	438,124	0	0
0 - 10	58	96	4.3	4.5	805,751	732,682	34,866	33,051
10 - 20	53	66	14.0	15.4	883,587	652,199	123,679	100,731
20 - 30	41	53	24.6	25.2	1,097,016	738,728	270,009	186,468
30 - 40	43	69	33.8	35.1	907,062	672,585	306,881	235,963
40 - 50	43	63	43.7	44.2	894,245	761,583	390,499	336,638
50 - 60	52	34	53.8	55.7	764,533	502,950	411,426	280,208
60 - 70	19	25	63.8	64.6	470,708	533,836	300,628	345,112
70 +	28	43	82.2	89.4	601,765	714,430	494,965	638,896
STATE TOTAL	414	561	28.2	27.8	769,114	623,844	216,854	173,563

DEBT BY LENDER 1985 & PERCENT CHANGE FROM 1984

REAL ESTATE DEBT



NON-REAL ESTATE DEBT (Operating Loans)



* Includes Farm Suppliers.

MONTANA FARM FINANCE BALANCE SHEET BY TYPE OF FARM

TYPE OF FARM	NUMBER OF REPORTS		DEBT TO ASSET RATIO AVERAGE		FARM ASSETS AVERAGE		FARM DEBT AVERAGE	
	1984	1985	1984	1985	1984	1985	1984	1985
			--Percent--		-----Dollars-----			
Cash Grains Only	78	103	23.4	20.6	799,472	635,350	186,710	131,185
Mostly Crops	106	118	30.8	34.5	763,397	725,824	235,281	250,094
Livestock Only	91	156	24.5	21.8	681,227	487,139	166,685	106,233
Mostly Livestock	119	147	30.1	31.2	787,260	739,031	237,107	230,656
All Other	20	30	34.4	33.5	912,546	566,783	313,605	189,860
STATE TOTAL	414	554	28.2	27.8	769,114	629,432	216,854	175,474

OTHER FACTS and FIGURES

--Real estate debt has shifted since the '84 survey with less debt being held by Federal Land Bank, FmHA, and commercial banks and more held by Individuals and others.

--Operating loan debt has shifted away from PCAs to commercial banks, FmHA, farm suppliers, Individuals and others. Interest rate averaged 12.9%, down 1% from '84.

--Farms specializing in either cash grains only and livestock only have lower debt to asset ratios than those with mixed crops and livestock.

--Twenty-nine percent of farmers in the 1985 survey had debt to asset ratios over 40--down from 34% in 1984.

--Operations with gross farm income exceeding \$100,000 have higher debt to asset ratios than those grossing less--these ratios have increased since 1984.

--Farm operators under 55 years old have much higher debt to asset ratios than those over 55.

--Average Montana farm debt has increased by 46% since 1979 and debt to asset ratio is up 58%.

--Twenty percent of the farmers surveyed in 1985 reported no debt.

--Eighty-two percent cited financial reasons as the reason they would quit farming prior to retirement.

TESTIMONY OF MONTANA BANKERS ASSOCIATION

IN OPPOSITION TO SENATE BILL 142

FORECLOSED AGRICULTURAL LAND - RIGHT OF FIRST REFUSAL

By George T. Bennett, MBA Counsel

Montana Bankers Association, representing state and national commercial banks in Montana, opposes Senate Bill 142.

The bill on its face seems both fair and simple. It purports to grant to the "former owner" the right of first refusal in the case of a lease or sale of foreclosed agricultural land as to the "person holding foreclosed agricultural land."

However, in operation the bill creates so many problems that it will work to the disadvantage of borrowers, lenders, and the public in general. Some of the problems are that the bill:

1. Fails to specify the "foreclosures" to which it applies. The definition of "foreclosed agricultural land" contained in subsection (2) of Section 1 implies that the bill covers all foreclosures by which agricultural land would be sold, including mortgage and trust indentures. If this is true, then it would include sales for federal income and local property taxes which are subject to other procedures. It apparently would include foreclosure of mechanics, agisters, crop dusters, and other liens, and fails to recognize that once a foreclosure is commenced all lienholders may join in the action. For example, does this bill apply to a sale for local property taxes under our tax collection statutes?

SENATE AGRICULTURE

FILED 16

DATE 1-28-87

BILL NO. SB 142

2. Fails to address the problem of identifying the "person holding foreclosed agricultural land." Is this the high bidder at the foreclosure sale? Is it a redemptioner? Is it the last person to redeem? Is it the mortgage debtor in the case of a mortgage?

Also agricultural lands can be held in many ways. It can be held by a number of individuals as tenants in common, it can be held by spouses, it can be held by families, it can be held by a corporation or a partnership, it can be held in trust by a trustee. Also the status of a "former owner" may change. Marriages, partnerships and corporations can be dissolved. Persons can die and their rights pass to their heirs, devisees or assignees.

3. Fails to establish a time frame. The right of first refusal as to a sale exists only as to the "first time the property is sold" under subsection (2) of Section 2. But what constitutes the first sale? Is a redemption a sale? Suppose the first proposed sale by a "person holding" occurs ten or twenty or thirty years after the foreclosure, does a right still exist? The bill implies that the right of first refusal exists only during the one year period of redemption, but this is not in any way made clear. If the right exists during the period of redemption then the "former owner" would be the judgment debtor, and the right of redemption serves a better purpose than the right of "first refusal" because on redemption all that need be paid is the indebtedness interest and costs.

As to the leasing, every time the land is leased there is a right of first refusal, apparently in perpetuity. This would

make leasing negotiations very difficult.

4. Fails to recognize LIEN LAWS. This bill ignores our existing lien laws, and particularly the fact that under a trust indenture the property can be sold by judicial sale as in the case of a mortgage, or by private sale under a power of sale. This is true also of a mortgage containing a power of sale where a private sale may occur.

5. Fails to place the "person holding foreclosed agricultural land" in a position to sell or lease. The bill denies to the "holder" the right to obtain a certificate of sale under § 25-13-711, MCA, until there is compliance with the act. Since there is a possibility the land may be leased or sold at any time after foreclosure, without time limit, the "holder" can never be deemed to have complied and, therefore, cannot receive a certificate of sale. If the "holder" does not receive the certificate of sale then the "holder" is not truly a "purchaser" and is in no position in terms of title to either lease or sell. No "holder" would subject himself to liability for purporting to sell or lease absent clear title, and no prospective lessee or purchaser would lease or purchase from a person not holding clear title.

CONCLUSION:

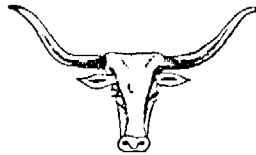
We would submit to the committee that our present mortgage and lien laws adequately protect the debtor; that such laws have worked in good and bad times through depressions and booms, and should not be changed. Change will only cause uncertainty and uncertainty only causes expensive and unnecessary lawsuits. Senate Bill 142 should not pass.

MONTANA STOCKGROWERS ASSOCIATION, INC.

P. O. BOX 1679 — 420 NO. CALIFORNIA ST. — PHONE (406) 442-3420 — HELENA, MONTANA 59624

OFFICERS.

JACK EIDEL	GREAT FALLS	PRESIDENT
WM. J. BROWN, JR.	SAND SPRINGS	FIRST VICE PRESIDENT
JAMES COURTNEY	ALZADA	SECOND VICE PRESIDENT
JEROME W. JACK	HELENA	EXECUTIVE VICE PRESIDENT
KIM ENKERUD	HELENA	NATURAL RESOURCES COORDINATOR



EXECUTIVE COMMITTEE.

CLARENCE BLUNT	REGINA	JOHN L. HOLDEN	VALERIE
BILL CHRISTENSEN	HOT SPRINGS	EARL LINDGREN	JOLEE
M.E. EDDLEMAN	WORDEN	GREG RICE	HARRISON
JOE ETCHART	GLASGOW	WALTER J. TAYLOR, JR.	BUSBY
WM. T. HARRER	FORT BENTON	DAVID VOLDSETH	MARTINSCA

TESTIMONY SB 142

My name is Kim Enkerud and I am representing the Montana Stockgrowers.

After review of the bill by the Montana Stockgrowers Ag Credit Committee and the Executive Committee, these people determined this bill to be unfavorable to the agricultural sector of the State of Montana.

We urge a do not pass on SB 142.

Thank you.

SENATE AGRICULTURE

EXHIBIT NO. SB 17

DATE 1-28-87

BILL NO. SB 142

person must maintain.

Senator Galt said that, in his area, it has always been accepted that you do the right hand side unless some other arrangement is made.

Committee members were concerned about subdivisions, people putting up woven fences which are more expensive, swampy or mountainous terrain which is more expensive and difficult to fence than flat land and the fact that the other person might refuse to pay his share if he felt the cost was too high and, in some cases, the person may not do any fencing at all.

Dave Cogley said that, if you wanted to collect from the adjacent landowner, you would have to prove the cost was reasonable. If your neighbor refuses to do the fencing or to pay for it, you can go ahead and do it and then bill him. HB 59 just defines the right hand side as there is nothing in the code defining which 1/2 of the fence belongs to whom. The code does say you can build the whole fence and send your neighbor the bill for 1/2 of the cost, providing it is a legal fence. He referred to MT Codes 81-4-101, citing a legal fence.

Senator Beck said there are problems with subdivisions, regarding 50 feet here, then 50 more feet belonging to another person and on down the line. He felt a landowner in a subdivision should have to maintain all the fence.

Senator Thayer suggested that lineal feet may solve the problem of mountains and coulees, rather than using the one mile rule.

After considerable discussion among committee members in regard to law suits over fencing, gentlemen's agreements, building the fence and later billing the neighbor, moving the fence line in on your property line a foot, and range laws saying you have the responsibility to fence livestock out, committee members came to the conclusion the bill would cause far more problems than it would solve.

DISPOSITION OF HB 59: Senator Bengtson moved to TABLE HB 59. Motion carried unanimously.

FURTHER DISCUSSION ON SB 142: Senator Weeding told the committee that, after last week's hearing, and the Bankers Assoc. attack on the bill, he now has a "gray" bill to present. Exhibit #3. He felt this cleared up concerns from the bankers. The first two concerns relate to types of foreclosures covered and the identity of the person holding agricultural land at that time. Amendment #1 takes

care of that. They have listed all the types of institutions that should be covered by this act. The types of actions covered, as well.

Senator Galt did not think the state could address nationally chartered banks. Dave Cogley said it was his understanding that all federal agencies and farm credit system lenders and possibly federally chartered banks do abide by laws of foreclosure and redemption of the state they are operating in.

Senator Weeding said the second concern was timing, or the length the right of first refusal may go on. Page 2, lines 15 through 18 address that. This time limit would coincide with the banks time limit. The leasing language was tightened up on lines 19 and 20 on page 2.

Fourth, was Mr. Bennett's concern of the bill's failure to recognize the lien laws. This bill wouldn't come into play until after the foreclosure during which lien claims must be resolved. Another of Mr. Bennett's concerns was that the language in section 4 might render it uncertain the holder could obtain the certificate of sale. We said that is now struck from the bill. The identity of the preceding owner was in doubt, so they have now used the term "preceding owner" throughout the bill. They put an additional burden on the person exercising the right to identify themselves. The former owner must notify the bank within 25 days after publication of the action of foreclosure, p. 4, line 9 through line 6 on p. 5 of the gray bill.

Senator Beck asked about p. 2, line 8, gray bill, following 3rd party where it says "make a "good faith" offer to sell or lease". He wanted to know the definition of "good faith". Dave Cogley answered that in subsection (3) an offer by certified mail to the name and address contained in the required notice which is given by the former owner to the creditor is "good faith" notice. Mailing by certified mail is a "good faith" offer. Value is determined by bid or offer of the 3rd party.

DISPOSITION OF AMENDMENTS TO SB 142 (Gray Bill): Senator Jergeson moved the amendments contained in the gray copy be absorbed into SB 142. Motion carried unanimously. The gray bill will be put into original SB 142.

Senator Story told the committee he thought the bill now takes out the private rancher who sells a piece of his ranch, but still affects the rancher who has to have a bank loan and wishes to assign the mortgage on contract for deed to a bank. The banker will end up with an assign-

ment and if the place is sold the money will go to the banker. Dave Cogley said the assignee takes on the same rights the former owner has. The bank will be a holder of foreclosed agricultural land subject to the right of first refusal if a mortgage is assigned.

Senator Story felt the banker wouldn't take an assignment like that. He also felt the bank would be in the same position if a contract for deed was assigned because he understood a contract converted into a mortgage. Dave Cogley said he didn't know if that would be true.

Senator Thayer asked if a person isn't making it and has used up all his resources, what opportunity is he going to have. Can he hide his assets some way to get a debt reduction or be able to bid on the ranch at a later time at a lower price. Weeding said they did not intend to provide a vehicle to hide assets. Owners are good operators and those people may be able to make a go of it or may come into an inheritance or get another loan. Some are 4th and 5th generations who should have a chance to buy back.

Senator Thayer asked if Senator Weeding knew of instances where some insurance companies refused to let occupants get back in. Weeding said two people testified at the previous hearing regarding this and he knew of a couple instances where this has happened in the eastern part of MT. He said some insurance companies are creating dynasties.

Senator Story felt this bill would hurt far more people than it will help. He estimated that there are about 23,000 ranchers in MT. Of these there are a few thousand who have not been in trouble. There is a far larger number working on borrowed capital. About half of that group are working so close to the line that anything we do to hurt their capital will put them out of business. We may save less than a dozen but there may be 10,000 who will survive if they sell part of their place. This bill applies to them when they sell if they have to assign to a bank. There are many places for sale and not many buyers so buyers can be selective. Sales can get complicated. Buyers won't wait the time limit to purchase, they will go somewhere there isn't any time limit. He did not think this bill should be passed.

Senator Jergeson thought the damage regarding lending institutions dealing with farmers based on this risk has already been accomplished by Congress passing Chapter 12. He said this bill provides an opportunity to avoid Chapter 12 situations and thought it was worth a try. He thought Senator Story's concerns were already covered under Chapter 12.

Senator Story, regarding leases, said people may let fences run down, alfalfa get out of production and the place would

become less valuable.

Senator Bengtson had problems with contracts for deed not being clear as there are assignments and other methods people use to convey property. Senator Weeding said the types of entities are defined on the 1st page on lines 20 through 24 of the gray bill. The types of proceedings are defined as the mortgage or execution of the judgement on page 2 of the gray bill. Assignments aren't listed, maybe they will have to be clarified.

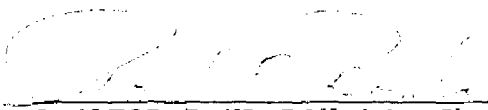
Senator Story said that a contract for deed must be treated as a mortgage once half is paid.

Senator Weeding said this doesn't impose any conditions on that holder. He only offers it at his terms, whether it be bankers, lenders or whatever type of holder it might be. If he doesn't want to sell it, there is no requirement he would have to.

Senator Weeding said FHA has the right of first refusal. He said he didn't know what would become of the Federal Land Bank, he said it was on the verge of collapse. A lot of land will end up in public ownership some day. FHA's enactment of first refusal makes you think that might be what the Feds will do with this anyway. There is talk about making it available to the former owner on a long term basis and discounted prices. He said if it was put into MT law it would be in place before the federal law went into effect. He said we are talking about the federal land bank and insurance companies, we aren't talking about private or big banks.

SB 142 and the gray bill will be taken up again at a later date.

There being no further business, the meeting adjourned.



SENATOR PAUL BOYLAN, Chairman

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK AND IRRIGATION
MONTANA STATE SENATE

February 11, 1987

The Agriculture, Livestock and Irrigation Committee meeting was called to order on the above date, in Room 415 of the State Capitol, at 1:00 p.m. by Senator Lybeck as Chairman, Boylan was in Natural Resources Committee presenting a bill.

ROLL CALL: Senators Galt and Boylan excused, all other members present.

FURTHER CONSIDERATION OF SB 142: Senator Thayer announced he had amendments for SB 142 which would put back the national or state chartered savings and loans and state chartered credit unions. He said the bill would be unconstitutional the way it is presently written. He said Mr. Bennett could explain this more fully. Amendments, exhibit #1.

Senator Bengtson said we should wait for the sponsor to be present for the explanation as he was not aware of the amendments.

Senator Lybeck said the committee wouldn't be taking any action on this bill because committee members were absent and the sponsor of the bill was not present.

FURTHER CONSIDERATION OF SB 277: Senator Lybeck presented amendments and said Senator Hofman was in agreement with the amendments. Amendments, exhibit #2.

K. M. Kelly, MT Dairy Industry Processors, explained the amendments, at the request of Senator Lybeck, saying it removes the requirement that 75% of all producers and distributors have to vote in order to make it a valid referendum, and changes the language to say a majority of those voting must vote in favor in order for it to be valid. It also says that a majority voting for the order must produce a majority of the milk produced in Montana. This bill requires 26 1/2% would have to produce a majority of the milk assigned to the pool because all milk will not be pool milk.

COMMITTEE QUESTIONS: Senator Jergeson asked how this would work. Mr. Kelly said the intent is that whoever votes on the referendum can't railroad it on the rest of the producers without a majority of producers but must also have a majority of the milk produced. It is impossible if only 50% of the producers voted and 26% were in the majority. The referendum would fail. It would be marginal if 38% had 50% of the milk assigned to the pool. The Board can call a second referendum if necessary; 50% of the milk has to be represented in order

of them coming out on the positive side, he said Keith Kelly, Dept. of Agriculture, also pointed out that they had some 800 telephone calls with 153 peer counseling out of that. He said who is to say and who is to know how many suicides were prevented, how much help they were able to give these people and maybe something in the way of financial and legal help had helped solve some of their problems. He said this was the picture for voluntary mediation we needed to look at and how will we know what could be accomplished by mandatory mediation.

DISPOSITION OF SB 321: A roll call vote was called on Senator Jergeson's motion that SB 321 DO PASS. There were 4 yes votes and 6 no votes. Motion failed. Senator Beck moved SB 321 DO NOT PASS. Motion carried, vote reversed. The bill will leave committee with an adverse committee report.

DISPOSITION OF SB 142: Senator Story moved SB 142, as amended, DO NOT PASS.

Senator Story felt the bill would harm far more people than it would help. He said it has been amended but he thought it would not be constitutional. Senator Jergeson didn't agree. He said nobody had shown the committee that it was unconstitutional.

Senator Story said that it had been suggested that we couldn't do what we did in the gray bill.

Senator Boylan asked for a roll call vote on Senator Story's motion. There were 5 yes and 5 no votes. The motion failed because of a tie vote and will remain in committee.

DISPOSITION OF SB 268: Senator Galt said there are a lot of problems with this bill. It made it impossible for anyone to sell the land because there is always this threat of someone coming in and wanting part of it back. You don't know what part he wants back.

Senator Galt moved SB 268 DO NOT PASS. Roll call vote was called for. There were 2 no and 8 yes votes. Motion carried.

DISPOSITION OF SB 278: Senator Thayer moved SB 278 DO NOT PASS.

Senator Jergeson said he had a long conversation with Randy Johnson from the MT Grain Growers Assoc., after the hearing the other day. They did not come to an agreement, but Sen. Jergeson pointed out to him, regarding the poll they took of grain producers last summer as to whether or not they wanted to continue with the current farm program or if they wanted some other alternative, the overwhelming majority of grain farmers and ranchers indicated they were not satisfied with the current program. He didn't know whether this bill was the alternative that the people who voted wanted, but the people

66

AGRICULTURE

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2-16-86

NAME	PRESENT	ABSENT	EXCUSED
ABRAMS, Hubert J.	✓		
BENGTSON, Esther G.	✓		
BECK, Tom	✓		
JERGESON, Greg	✓		
KOLSTAD, ALLEN C.	✓		
LYBECK, Ray	✓		
STORY, Peter R.	✓		
THAYER, Gene	✓		
GALT, Jack VICE CHAIRMAN	✓		
BOYLAN, Paul CHAIRMAN	✓		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE AGRICULTURE

Date 2-16-87 SB Bill No. 142 Time 2:17 p.m.

NAME	YES	NO
ABRAMS, Hubert J.		✓
BENGTSON, Esther G.		✓
BECK, Tom	✓	
JERGESON, Greg		✓
KOLSTAD, Allen C.		✓
LYBECK, Ray		✓
STORY, Peter R.	✓	
THAYER, Gene	✓	
GALT, Jack VICE CHAIRMAN	✓	
BOYLAN, Paul CHAIRMAN	✓	
	5	5

Rita Tenneson
Secretary

Paul Boylan
Chairman

Motion: SB 142 Do Not Pass as amended
Senator Story's Motion

STATUS SHEET

50th LEGISLATIVE SESSION

AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE

SENATE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
46	2/4/87	2/13/87								2/13/87	
142	2/24/87	3/13/87									3/27/87
238	2/18/87	3/4/87						3/6/87			
268	2/11/87	2/13/87							2/13/87		
277	2/24/87	3/6/87						3/6/87			
321	2/11/87	2/13/87	(joint meeting with Senate)							2/13/87	
321	2/24/87	3/13/87	(Executive Action)							3/18/87	
327	3/3/87	3/11/87						3/11/87			
348	2/23/87	3/4/87	tabled								
379	3/3/87	3/6/87						3/6/87			
SENATE JOINT RESOLUTION											
12	2/24/87	3/11/87						3/11/87			
15	3/31/87	4/1/87						4/1/87			

(10) separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 13, 1987

Representative Duane W. Compton, Chairman, called this meeting to order at 1:00 p.m. in Room 317 of the Capitol.

ROLL CALL

All committee members were present, except Rep. Harriet Hayne. Tom Gomez, Researcher, was present.

Bills to be heard today were SB 142 and SB 321.

SENATE BILL 142

Senator Cecil Weeding, Senate District 14, chief sponsor of SB 142, said this is the 'Right of First Refusal' bill. SB 142 is an Act to give the immediately preceding owner of foreclosed agricultural land the right to purchase or lease such land by meeting the terms and conditions of the highest offer made to purchase or lease such land; and provides an immediate effective date.

It is an opportunity for the preceding owner to come back in under certain conditions and meet an offer made to a third party or that another party makes to foreclosed land that is acceptable to that foreclosure. It doesn't give that former owner any rights to a diminished value or price. It doesn't require the mortgage forecloser to offer anything different to anyone else. Most of the burden is on the judgment debtor, the preceding owner who must claim this right. He must exercise this right, it must be filed, he must notify creditors that he will exert this right, and finally he must file that on record and provide the names and addresses of the people who are eligible to exert that right, so that it is easily determined and not something floating around that comes as a surprise to somebody.

This is an emerging concept - the states of Iowa, Minnesota, Colorado and Nebraska have adopted it. SB 142 is somewhat of a composite of those acts. This is in response to the crisis in agriculture and an attempt to keep some people on the farm and in rural communities. Farmers are a lot of times victims

71

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 13, 1987

Representative Duane W. Compton, Chairman, called this meeting to order at 1:00 p.m. in Room 317 of the Capitol.

ROLL CALL

All committee members were present, except Rep. Harriet Hayne. Tom Gomez, Researcher, was present.

Bills to be heard today were SB 142 and SB 321.

SENATE BILL 142

Senator Cecil Weeding, Senate District 14, chief sponsor of SB 142, said this is the 'Right of First Refusal' bill. SB 142 is an Act to give the immediately preceding owner of foreclosed agricultural land the right to purchase or lease such land by meeting the terms and conditions of the highest offer made to purchase or lease such land; and provides an immediate effective date.

It is an opportunity for the preceding owner to come back in under certain conditions and meet an offer made to a third party or that another party makes to foreclosed land that is acceptable to that foreclosure. It doesn't give that former owner any rights to a diminished value or price. It doesn't require the mortgage forecloser to offer anything different to anyone else. Most of the burden is on the judgment debtor, the preceding owner who must claim this right. He must exercise this right, it must be filed, he must notify creditors that he will exert this right, and finally he must file that on record and provide the names and addresses of the people who are eligible to exert that right, so that it is easily determined and not something floating around that comes as a surprise to somebody.

This is an emerging concept - the states of Iowa, Minnesota, Colorado and Nebraska have adopted it. SB 142 is somewhat of a composite of those acts. This is in response to the crisis in agriculture and an attempt to keep some people on the farm and in rural communities. Farmers are a lot of times victims

AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE

March 11, 1987 - Page 2

of the times and circumstances. The more progressive people are the ones who are caught up in this. They expanded or bought equipment at the wrong time and this gives them one final opportunity to redeem themselves within one year through the right of redemption. It does acknowledge that farm people, farm land, farm business are somewhat unique. Many of those people have been on their places four or five generations. They are the backbone of their communities and if this would help preserve even some of them, it is worthwhile.

This is a new concept and this act received a long, extensive hearing in the Senate. Both sides were well debated. It was unfortunate scheduling that prevented SB 142 from being heard at the same time as SB 268 and SB 321.

He offered testimony from Lyle Quick, County Commissioner, who feels passage of SB 142 will offer a small ray of hope for those who have none. See EXHIBIT #1.

Although the bill was extensively amended in Senate action, and the language changed throughout, the substance of the bill has not been changed. The filing requirement was added in Section 5. Section 1 defines agricultural land; and includes the holder of foreclosed ag land and essentially includes commercial lenders, institutions, insurance companies, mortgage companies, and federal land bank and the FHA, but not private contracts. Section 2 is where the requirement is made that the holder of foreclosed land extend the offer to the former owner to repurchase or lease at terms they are purporting to offer to a third party. It is two-part: requires a lease offer to be made each time a lease is renegotiated. But the first time he fails to meet the lease offer, he has no right to come back. The purchase offer is a one time offer only. The former owner must meet the first bona fide offer made or his rights are forever extinguished.

Section 3 contains time limits for leasing or purchasing the foreclosed land. Section 4 contains the requirement that a notice by the preceding owner with any changes of address that result over time, and designates and provides transfer authority. The foreclosing creditor has an obligation under section 4 to advise the debtor at the time of foreclosure that this right does exist and the time frames in which he must act to preserve this right. Section 5 requires recording of that intent with the clerk & recorder within three days of the time that a response is made to the offer, so it is there for all to see. If it is not there within three days, the former owner has forfeited his right. He must release the

AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE
March 13, 1987 - Page 3

filing at the expiration of whatever time periods are involved or that he has failed to meet an offer and the right is void.

PROPOSERS

LYLE QUICK, See EXHIBIT #1.

TERRY CARMODY, Montana Farmers Union, asked how can anybody vote against giving somebody a second chance. He hoped SB 142 would be concurred in.

JOYCE JANACARO, MACO Agriculture Committee, supports SB 142 on the basis of fairness for both the immediately preceding owner and the holder of foreclosed land. EXHIBIT #1A.

MARY KEE, Roundup, MT. Montana People's Action, said she and her husband need the opportunity to redeem their ranch. They need support for SB 142. EXHIBIT #1B.

MIGNON WATERMAN, Montana Association of Churches, supports public policies at the state level that help preserve family farms and the vitality of rural communities. EXHIBIT #2.

JOHN CRTWEIN, Montana Catholic Conference, supports SB 142 because it offers Montana farmers an opportunity to continue in farming. EXHIBIT #2A.

JO ANN FORSNESS, WIFE, supports SB 142 as originally written. EXHIBIT #2B.

MONTE MLEKUSH, farms south of Winnett, testified on behalf of the Northern Plains Resource Council. They feel we are obligated to protect our agricultural heritage. Some claim this legislation will dry up credit, but no lender should lend to any business that is not viable. Without profitability to agriculture, there will be continued restriction of ag credit. Some way ag families must be kept in their communities as taxpaying contributors. He urged support of SB 142. EXHIBIT #3.

BUTTONS MATHIAS, a licensed real estate broker in Wyoming and Montana, supports SB 142. The Right of First Refusal as it is defined is an opportunity for a party to match a bona fide offer. These people must meet all components of an offer, not just one or two. Sometimes there is confusion between the Right of First Refusal and an option. An option already has value established. The 15 days to meet a lease offer and the 60 days to meet a purchase offer are not excessive in any

AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE
March 13, 1987 - Page 4

way. This is not uncommon in the real estate industry. The right of first refusal could simply become a way of doing business. All real estate brokers and representatives of lenders would just disclose that the Right of First Refusal is on this particular piece of land, and in most cases that the purchasers are qualified and they are bona fide buyers. They will still stay interested.

This does not need to be heavy on administration. The right of redemption is not recorded - it is just the law, and this could be done the same way in this bill. It is not necessary to file a right of redemption because it is already in the law. If there are problems with clearing where the title could possibly be encumbered, this could be extinguished with filing of an affidavit, so if there is concern about files or encumbrances on the title, there are already things in place that deal with this.

The Right of First Refusal is just assurance that the dispossessed farmers and ranchers of Montana are having the same chance as the rest of the world. They have put much of their life into this land and they should be just as eligible for a writedown, a writeoff as anybody else in the world, and at this point they are not. If wealthy out-of-state people come in and buy up foreclosed Montana land, it is being placed in the wrong hands.

RICHARD SIDWELL, Sidwell Land and Cattle Company, Columbus, MT, is a real estate broker, and also ranches and has ranched in Montana his entire life. The last seven years he has spent in the real estate business. He strongly supports SB 142. It is a way to stabilize the value of agriculture land. Usually the borrower has worked to improve the property and make it worth more than when the mortgage was made although in today's times it is hard to see that. If someone is allowed to come in and bid substantially less and the lender takes that offer, the borrower is not able to protect his investment. This is just another way for him to protect his investment in time and give him an opportunity to have a second chance back on his farm or ranch. There isn't anything wrong with that. As far as the real estate business goes, it is hard enough for brokers to get a repossessed property from a banker to sell anyway, and bankers are not the best of salesmen.

DON JUDGE, AFL-CIO, supports SB 142 because farmers, ranchers, and workers of Montana have a common heritage of a strong work ethic, believe in social and economic fairness, and in the protection of the rights of the individual. See his testimony, EXHIBIT #4.

29

AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE
March 13, 1987 - Page 5

EXHIBITS #4A-4M - Because of a time crunch the committee had with the House going into session shortly, there were many who did not have the opportunity to testify orally. They presented the attached testimonies. Also see the Visitors' Register for others who were in attendance and support SB 142.

OPPONENTS

GEORGE BENNETT, attorney from Helena, MT, representing the Montana Bankers Association, opposes SB 142. This bill will work to the disadvantage of communities generally. See his lengthy testimony EXHIBIT #5. He does not think the many flaws can be remedied by amendment. Our present mortgage laws and the free marketplace should be allowed to operate.

ELROY FLETCHER, representing the 12th Farm Credit District of Spokane, Washington, stated their basic practice is to lease property back to the immediately preceding owner of land obtained through deeds in lieu of foreclosure or foreclosure action, unless there is a situation where the previous owner had not been properly maintaining the property and/or has been seriously uncooperative. They do not oppose SB 142, but it does create significant impediments to the lease or sale of such acquired property. See his testimony, EXHIBIT #6.

ROBERT N. HELDING, appearing on behalf of the Montana Association of Realtors, was instructed by the Association to let people know they are cognizant of the critical problems facing Montana's agricultural community. They oppose SB 142 for reasons stated on their EXHIBIT #7. Montana Realtors recommends a Do Not Pass on SB 142.

TIM GILL, President of Montana Livestock Ag Credit, said they finance only agriculture loans, and they feel SB 142 is a discriminatory bill. They are concerned for the availability of ag credit to all of the people who borrow. They haven't had a foreclosure for years. Their organization does not loan for profit, but to support the 200 borrowers to whom they loan. See his testimony, EXHIBIT #8.

LOREN SOLBERG, Montana Land and Title Association, opposes SB 142 because it raises a lot more questions than it offers answers, and they strongly believe that they would not have an insurable title to land if the Right of First Refusal were to be adopted. This bill raises a lot of problems with title foreclosures.

AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE

March 11, 1987 - Page 6

WARREN ROSS, Chinook, Ross 8-7 Ranch, Inc., opposes SB 142, saying terms of a contract should not be changed. Most lenders will try to work out a viable plan. There is no lack of available funds, but lenders are not sure they will be able to get their money back. See his testimony EXHIBIT #8A.

CAROL MOSHER, Montana CattleWomen, is opposed to SB 142 because of the adverse effects that it could have on the agricultural borrower who is struggling to obtain operating funds. See her testimony, EXHIBIT #9.

LYLE MANLEY, Department of State Lands, said they are not opposed to SB 142, but are uncertain as to its effect on the leasing of school trust lands, and may place the leasehold in a tenuous position. The DSL offered an amendment, copy of which is attached, exempting school trust lands. See EXHIBIT #10.

QUESTIONS (OR DISCUSSION) FROM THE COMMITTEE

Rep. Cody asked how the secondary mortgage market in the four states that have the right of first refusal has affected the banking industry. Bill Johnson, President of Montana Bankers, thought the secondary market will dry up.

Rep. Rapp-Svrcek asked if the right of first refusal is a normal thing. Ms. Mathias said that is used in general practice in the real estate business at the present time. It is a trade tool. It does not hinder their sales. People know that right is there.

Rep. Rapp-Svrcek asked if a bank would control if they foreclosed? Mr. Bennett said over time things change. After five or more years the title might have to go through a quiet title action to clear it. A bank bids in a piece of land to protect their money, and they want to dispose of it as quickly as possible. This bill would mandate the bank to deal with the former owner no matter whether he were credit worthy or a good operator or not. Under the law 20 acres is considered agricultural land if it is not used for industrial or commercial purposes.

Rep. Giacometto said this would be a match offer? Mr. Bennett said on page 8, line 2 the bill says make a good offer to the former owner and on the same terms and conditions. Ms. Mathias said the question in general here is the writeoff. The banks are willing to take a loss, but they are not willing to take the loss from the man who lost the land to them.

AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE
March 13, 1987 - Page 7

Rep. Corne' asked why the bill does not apply to all lenders. Sen. Weeding stated it is not discriminatory because the charters of credit unions and savings and loans prohibit them from engaging in ag land loans. The contracts of deeds are not commercial. Theirs is two-party and if I default the person selling it gets his property back. With a lender it is a three-party loan. The 20-acre thing is being addressed this time.

Rep. Cody asked about the 60-day timeframe. Sen. Weeding said 60 days is a typical timeframe.

Rep. Patterson said different lenders have different means of dealing with foreclosing land. Land Banks and PCAs have certain guidelines they have to follow. This type of bill might bring banks more in line. Mr. Bennett didn't believe that would be the effect of the bill. Rep. Patterson asked if the bottom line of banks is to redeem your money. Mr. Bennett said they are under the control of the court. Generally the parties who can redeem are named. Right of redemptions are rejected. Rep. Patterson asked who received that payment. Mr. Bennett said if the bank bids that property in, the payment is made to the bank. If someone else bids it in, or a second or third mortgage lender, the payment would go to the bank. The holder of the second mortgage has the right to redeem as does the third mortgagor. He had no amendments and feels the total bill is unworkable.

Rep. Bachini asked if the new Chapter 12 would have anything to do with this now. Mr. Bennett stated Chapter 12 is a reorganization type of bankruptcy on lands that may have been used as collateral. It sets the debt based on the value of the land and not the amount of the loan. There are those who feel it may be better to let the property go into bankruptcy and then go back in and buy it at a lower price.

Rep. Cody asked what is being added timewise by this bill. Sen. Weeding said you have one year's right to redeem after foreclosure. This adds five years from the date of foreclosure, but it has seven in it at this time.

Rep. Corne' remarked this is talking about the right of redemption based on the full indebtedness. Right of refusal wouldn't necessarily be on the full amount.

Senator Weeding closed. Most of the ag land is held by the federal farm home (FHA) and the PCAs. Commercial banks hold 10% and 10% is held by insurance companies; 25% is held by private people. The FHA has the right of first refusal

AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE

March 13, 1987 - Page 8

written into their law now. It is the intent of Congress that the Federal Farm Credit System have the right of first refusal. SB 142 would just be putting into Montana codes what the intent of Congress is. The other 10% don't have a whole lot of real estate in their portfolios; they have sent them to the FHA for poorer loans.

Representative Compton stated SB 142 would be put into a subcommittee.

SENATE BILL 321

Senator Greg Jergeson, Senate District #8, remarked this bill had been heard by a joint Senate and House Committee. This is an Act providing for mediation of agricultural indebtedness, authorizing the Department of Agriculture to provide mediation services; amending 80-13-102, and section 15, Chapter 9, special laws of March 1986; and providing an effective date and a termination date. As written it provided for the mandatory right to mediation. Senate amendments changed the right to voluntary mediation and that would support a mediation process of some kind that is being discussed with this bill. There are two different versions of the supporters of this bill.

PROPOSERS

JO BRUNNER, speaking for the Montana Ag Coalition, said they have met several times on this bill and have met with other agriculture interests. It was decided to support certain portions of SB 321 concerning the mediation process. See her testimony, EXHIBIT #11.

DON JUDGE, Montana State AFL-CIO, supports SB 321. Mediation is fair, is less costly than litigation. We must have a viable agriculture industry as a basis for other industries. Montana's economic problems are caused by actions from Washington, D.C. See his testimony, EXHIBIT #12.

PHILIP E. JOHNSON, Director of the MBA, supports SB 321 with voluntary mediation only. See his testimony, EXHIBIT #1.

ROBBIE GREEN, rancher, testified on behalf of the Northern Plains Resource Council in support of SB 321. He would rather have mandatory mediation than voluntary mediation. See his testimony, EXHIBIT #14.

ROY PATTE, farmer from Ryegate, MT and President of Montana People's Action, entered several documents, EXHIBITS #15. He says mediation is working well in other states and should work in Montana.

EXHIBIT

#1

#1

DATE Mar. 13, 1987

SB 142 - Sen.

Cecil Harding

Dear Chairman, members of the committee.

My name is Lyle Quick. I'm presently a McCone County Commissioner and serve as Chairman of the Agriculture Rural Affairs Committee for our state Association and also represent Montana on the National Association of Counties Agriculture Committee.

For the first time in history, the state and national association have organized agricultural steering committees. I believe it is quite obvious why this action was taken. Our state and national heartland is dying. We as public servants must put forth every effort to save our businesses, our farms and ranches, our schools and churches, and ultimately our communities.

In your deliberations of SB 142, I think 2 questions must be asked of yourself and possibly of others:

- #1 Is it not fair and just that the original land owner be given the right to meet a 3rd party bid?
- #2 Will SB 142 dry up credit? If so, surely there must be a thread of evidence somewhere that would substantiate that claim. I too cannot give you irreputable evidence that it won't dry up credit, but I can say that in the states that have similar legislation, it has not created a problem.

Whether SB 142 passes or not will make a small difference to the masses on either side, but it will offer a ray of hope for those who have none.

Please look favorably at SB 142.

Thank you.

Lyle Quick

WITNESS STATEMENT

DATE Mar. 13, 1917

HB 142 - Ser.

Cecil Weeding

NAME James J. Janssen BILL NO. 142
 ADDRESS Epitaph, Mt. DATE 3-13-17
 WHOM DO YOU REPRESENT? Mr. Co. Agriculture & Rural Affairs C.
 SUPPORT yes OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

We support the bill on the basis of fairness for both the "immediate preceding owner" and the "holder of foreclosed land." A farmer or rancher should have the first right of refusal.

EXHIBIT #1B
DATE Mar. 13, 1987
SB 142 - Sen.
Acil Weeding

WITNESS STATEMENT

NAME Mary Lee BILL NO. SB 142
ADDRESS 16545 Hwy 12 W, Roundup MT DATE 3-13-87
WHOM DO YOU REPRESENT? Montana People's Action
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Mr. Chairman committee members:
My name is Mary Lee of Roundup MT and I am
member of Montana People's Action.

I am here in support of SB 142. Our ranch was
sold at sheriff's sale Sept 11, 1986 for \$261,000. The current
price is \$100,000. I need the opportunity to redeem the
ranch at a price which will support a cash flow.

Please support SB 142

Thank You
Mary Lee

Montana Association of Churches



Montana Religious Legislative Coalition • P.O. Box 745 • Helena, MT 59624

SB 142 - Sen.
Civil Speeding

March 13, 1987

WORKING TOGETHER:

American Baptist Churches
of the Northwest

American Lutheran Church
Rocky Mountain District

Christian Church
(Disciples of Christ)
in Montana

Episcopal Church
Diocese of Montana

Lutheran Church
in America
Pacific Northwest Synod

Roman Catholic Diocese
of Great Falls-Billings

Roman Catholic Diocese
of Helena

United Church
of Christ
MT-N.WY Conference

United Methodist Church
Yellowstone Conference

Presbyterian Church (U.S.A.)
Glacier Presbytery

Presbyterian Church (U.S.A.)
Yellowstone Presbytery

CHAIRMAN COMPTON AND MEMBERS OF THE HOUSE AGRICULTURAL
COMMITTEE:

I am Mignon Waterman and I represent the Montana
Association of Churches.

The Montana Association of Churches supports SB142
because we believe it will provide Montana farmers an
opportunity to buy or to lease back their property
after it has been liquidated.

The Montana Association of Churches supports public
policies at the state level that will help preserve
the family farm system and the vitality of rural
communities. We believe the right of first refusal
is such a policy.

We urge this committee to support SB142.



Montana Catholic Conference

Mar 13, 1987
#SB142 - Sen. Ortwein
Weeding

March 13, 1987

CHAIRMAN COMPTON AND MEMBERS OF THE HOUSE AGRICULTURAL COMMITTEE:

I am John Ortwein representing the Montana Catholic Conference.

The recently released United States Bishops' Pastoral Letter on the Economy states: the loss of a farm and being forced to leave the land is a tragic experience. It often means the sacrifice of a family heritage and a way of life. Once farmers sell their land and equipment, their move is practically irreversible. The costs of returning are so great that few who leave ever come back. Society should help those who would and could continue effectively in farming.

Because Senate Bill 142 offers Montana farmers an opportunity to continue in farming, the Montana Catholic Conference urges the committee to support this bill.



NORTHERN PLAINS RESOURCE COUNCIL

SB 142 - 3/13/87
Breedling

Field Office
Box 858
Helena, MT 59624
(406) 443-4965

Main Office
419 Stapleton Building
Billings, MT 59101
(406) 248-1154

Field Office
Box 886
Glendive, MT 59330
(406) 365-2525

Testimony in support of SB 142
House Agriculture Committee 3/13/87

Mr. Chairman, members of the committee. I'm Monte Mlekush. I farm south of Winnett. I'm testifying on behalf of the Northern Plains Resource Council in support of SB 142.

It is ironic that in Montana's Centennial year we are selling our basic heritage by refusing to help Montana's farmers and ranchers.

The intent of this legislation is to give people who have lost their operation the opportunity to meet a third party bid for the lease or purchase of their foreclosed land.

For instance, if I lost my place and the creditor accepted a third party bid, I would have the opportunity to match the same terms and conditions of that bid. According to SB 142, I would have 15 days to match a lease agreement and 60 days to match a 'bid' for purchase.

Borrowers who cannot make payments on loans made in times of inflated land values see their places sold at today's lower prices, ^{at} terms some of them could meet. Foreclosures today are due more to declining land values than to poor management. Many of these people have been making a living, a good living, for 10-15-^{even} 50 years. Both lender and borrower entered these contracts with eyes wide open. However, while

both borrower and lender lose in a foreclosure proceeding the borrower stands to lose all with no real alternative or chance of recovery.

Opponents claim this legislation will dry up credit. I feel the concern is moot. Credit has been drying up since 1981 due to general worsening of the ag economy. No lender should lend to any business that is not viable. The bottom line is that unless we can improve

84

profitability to agriculture, there will be continued restriction of ag credit.

One solution to this tragedy is to devise ways to help keep ag families in their communities as taxpaying contributors. The right of first refusal effectively allows both lender and borrower to resume a reasonable debt load without unnecessary loss of community vitality.

As agricultural people are forced to leave their land and communities, the costs of maintaining basic services are borne by fewer and fewer people. Businesses in small communities suffer, the communities themselves suffer, rural banks suffer. Providing the right of first refusal allows capable families, who are for the most part victims of circumstances beyond their control, to remain in their homes and communities.

I urge you to support SB 142.

Thank you.



JAMES W. MURRY
EXECUTIVE SECRETARY

Box 1176, Helena, Montana

ZIP CODE 59624
406/442-1708

Mar 13, 1987
SB 142 - Sen. (S)
Meeting

TESTIMONY OF DON JUDGE ON SENATE BILL 142 BEFORE THE HOUSE AGRICULTURE COMMITTEE,
MARCH 13, 1987

Mr. Chairman, my name is Don Judge and I am here today on behalf of the Montana State AFL-CIO to testify in support of Senate Bill 142.

We support this bill because the farmers, ranchers and workers of this state have a common heritage. This common heritage is based in a strong work ethic, a belief in social and economic fairness, and a belief in the protection of the rights of the individual.

Montana is being confronted with a financial crisis. Every basic industry (agriculture, mining, timber, oil and gas) in our state, is in a decline. The state's budget deficit, the high unemployment, and the loss of population and tax base by our cities and towns are all symptoms of a basic underlying problem -- a depression in our natural wealth industries.

The question that is being addressed by Senate Bill 142 is not how to increase revenue or decrease expenditures. It is not a question of what type of new tax to impose on the people of our state. Nor is it a question of which service or program for the economically disadvantaged must be curtailed. The question that is addressed in this legislation, and this committee in its decision on SB 142 must answer is -- ARE WE GOING TO FIGHT FOR THE SURVIVAL OF RURAL AMERICA?

If we choose not to fight, the trend toward corporate and institutional ownership of our land, which has already started, will become the basis of Montana's agriculture industry. Montana already has enough experience with the type of social and economic injustice we get when out-of-state corporations own our assets.

Right of first refusal is likened to the right of an employee to be rehired if a plant that had been closed because of poor economy is reopened at a later date. To the people in the labor movement, that is a basic right which we fought for decades to secure for working men and women. We believe that Montana's farmers and ranchers deserve that same right.

Senate Bill 142 is not a give-away. It does not create additional costs for the lending institution that is selling the property. It does not cost the state anything. The original owner can only purchase the property if he or she can arrange financing.

We urge you to vote for Senate Bill 142. A vote for this bill is not only a vote for our family farmers and ranchers, but it also is a vote for rural America. It tells the people of this state that even though our state and its financial problems have been forgotten by the federal administration, the legislators we elected here in Montana have not.

We hope you agree with our position and vote for Senate Bill 142. Thank you.

WITNESS STATEMENT

Nov 13, 1967
SB 142 - Linn. Co. 6
Hearing

NAME GEORGE T. BENNETT BILL NO. SB-142
ADDRESS 111 N. Main, P. O. Box 1705, Helena 59624 DATE _____
WHOM DO YOU REPRESENT? Montana Bankers Association
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: See attached.

TESTIMONY OF MONTANA BANKERS ASSOCIATION

IN OPPOSITION TO SENATE BILL 142

FORECLOSED AGRICULTURAL LAND - RIGHT OF FIRST REFUSAL

By: George T. Bennett, MBA Counsel

The Montana Bankers Association, representing state and national commercial banks in Montana, opposes Senate Bill 142.

The bill purports to grant to the "immediately preceding owner" of "agricultural land" a right of first refusal as to lease or sale by certain specified lenders if they have "acquired the right to dispose of agricultural land through foreclosure of a mortgage or trust indenture on the land, whether by judicial proceedings or otherwise," or by execution of a judgment.

This bill in operation will create so many problems that it will work to the disadvantage of borrowers, lenders, and the public in general. Some of the problems presented by the bill are:

1. Discriminates Between Lenders And Against Persons Not Engaged In "Agriculture":

This bill, which would apply only to "agricultural lands" (and this raises questions) and only to certain professional lenders, will favor only those persons falling within the scope of the bill as owning agricultural lands, and thus discriminates against all other landowners who might use their lands as collateral for loans, shifting the costs incurred under the bill to those borrowers and to the public in general, and discriminates as between lenders.

88

2. Can Reward Mismanagement And Inefficiency:

The bill is based on the premise that the owner of agricultural lands has lost the same because of the present crisis in agriculture. This may not be the case. The party may have lost the property through mismanagement, and/or inefficiency, yet that same person is allowed a right of first refusal which is similar to an option to reacquire the property even though they may have demonstrated an inability to manage the property carefully, and also may not be creditworthy. Good managers in a free marketplace will be given a preference to lease or buy.

3. Right Of Redemption Adequately Protects Most Debtors:

Montana law presently allows a one year right of redemption which allows the debtor, by paying only the debt, interests and costs, to reacquire the property. This right of redemption which has existed in Montana law and in the law generally for many years, adequately protects most debtors where they have an opportunity to refinance or make other arrangements to reacquire the property and to operate it in the future.

4. Excludes From Coverage Certain Professional Lenders And Private Lenders:

Subsection (2) of Section 1 sets forth the lenders covered by the act. It uses such terms as "a mortgage company" and "a farm credit system lender," and then uses the catch-all phrase "or any substantially similar foreign entity." There is no precise definition for a "mortgage company" or of "farm credit system lender" or a "foreign entity." Excluded are savings and

loans, credit unions, some federal lenders, private lenders, and all entities that use contracts for deed or other similar security devices.

5. Discriminates Against Efficient Operators:

Agricultural lands are generally not sold for cash, but rather are sold on credit, and the creditworthiness of the prospective buyer is always a critical factor. Also, in connection with leasing of agricultural lands, the lessor will always look to see if the operator is efficient and will properly maintain the land in terms of irrigation, not overgrazing, and other factors. This right of first refusal to the "immediate preceding owner" puts on a par with an efficient operator, or a person with a good credit rating, someone who may not be an efficient operator, may have abused the land, or may be lacking in creditworthiness. A system which prevents agricultural lands from being returned to efficient operation in the hands of good managers works contrary to the best interest of the State of Montana.

6. Clouds Title To Agricultural Lands For Six Or More Years From The Date Of Foreclosure:

The bill, under Section 4, requires either the foreclosing party or the sheriff to advise the "immediate preceding owner" of his or her right of first refusal. The immediate preceding owner then must give notice to the holder of the foreclosed agricultural land, and must file such notice with the Clerk and Recorder, and, in addition, must give notice of any change of address. The right of first refusal applies to the first lease or sale until

the time for holding such real estate by a bank, under § 32-1-423(2) has expired. This statute (32-1-423(2)) presently provides a five year period which may be extended by the Department of Commerce, and applies only to state banks. Such special written permission from the Department of Commerce extends the time. Thus we have an open-ended time frame for exercise of the right of first refusal. What if the property is held by a national bank not subject to 32-1-423? Given all of these contingencies it is doubtful whether any purchaser of the property would accept the same absent a quiet title action in which it is determined that the right of first refusal has in fact been extinguished, waived, or otherwise no longer applies.

7. Problems In Identifying The "Immediate Preceding Owner":

Nowhere in the bill is the term "immediate preceding owner" defined. Agricultural lands can be owned in many ways. It can be held by a number of individuals as tenants in common or as joint tenants. It can be held by spouses or family. It can be held by a corporation, a partnership, or a trust. Also, the status of the parties may change. Persons die and partnerships, trusts and corporations are liquidated. The partners in a partnership may change. Stockholders in a corporation may change. The bill attempts to address this problem in a very incomplete and confusing manner by stating, page 4, line 5, "If the immediate preceding owner is an entity for which no single individual is ordinarily authorized to act, the notice shall also indicate the necessary transfer of authority that enables the individual

named to the notice to act." Again, in many cases only a comprehensive and expensive quiet title action would clearly establish that the land is no longer encumbered by the right of first refusal.

8. Problems With The Definition Of "Agricultural Lands"

The bill defines agricultural lands by applying the definition in § 15-7-202. However, this definition applies to any lands under 20 acres that are "actively devoted to agricultural use" if the lands produce not less than \$1,500 in annual gross income from raising livestock or crops, with an exception in the case of a crop failure due to intervening causes or "marketing delay." Also under the amendments made by the June 1986 Special Session (Ch. 35, Sp. L. June 1986) lands over 20 acres are deemed "agricultural" if not "devoted to a commercial or industrial use."

The bill in no way clarifies at what point in time the lands must be "agricultural" in nature. Is it at the time of the creation of the indebtedness? At the time of foreclosure? Or at some subsequent date? Suppose the holder of the "agricultural lands" decides to subdivide the lands and sell them as non-agricultural subdivided lands. Does the right of first refusal still attach? Would the right of first refusal attach to each subdivided parcel? Is there a built-in incentive to the holder of such lands to subdivide? Thus subdividable lands not used for commercial or industrial purposes, larger than 20 acres, would be covered.

9. Bankruptcy:

Does the bill apply to lands sold out of a bankruptcy "proceeding?"

10. Effective Date:

This bill is simply made applicable on passage and approval. Nowhere does it state what situations are affected. That is, does it apply to properties now held by one of the named lending institutions even though the foreclosure occurred a number of years ago and the right of redemption was not exercised? Does it apply to lands that are presently under lease? Does it apply to sales which have been arranged but not completed before the passage and approval of the act?

IN CONCLUSION:

This bill will prevent the return of agricultural lands to use by the most efficient farmers and ranchers; will increase the costs of credit; will cloud title to agricultural lands; and creates discrimination between borrowers and lenders.

The legislature should allow the marketplace to operate freely; if an efficient operator has lost agricultural lands through foreclosure, that person will be the most probable prospect for lease of the lands or possible purchase in the future. To mandate that a right of first refusal be extended in all cases to the former operator (if that is the way the bill operates), is to interfere with the free operation of the marketplace and to reward mismanagement and inefficiency.

SB 142 *Amended*
Hearings

Testimony before the Montana State House Agriculture Committee
on S.B. 142
March 13, 1987
by Farm Credit Services

The Farm Credit Services basic practice is to lease property back to the immediately preceding owner of land obtained through deeds in lieu of foreclosure or foreclosure action, unless there is a situation where the previous owner has not been properly maintaining the property and/or has been seriously uncooperative. [Therefore, we are not opposing Senate Bill 142. However, since S.B. 142 does create significant impediments to the lease or sale of such acquired property, we wish to express several concerns to the Committee should they desire to mitigate these concerns through further amendment.

- 1) We have a concern about being required to lease property to a prior owner who cannot or will not properly maintain the condition of that property. In such a case it would seem there should be exception to the right of first refusal if the holder of foreclosed land can demonstrate that the property would not be properly maintained.
- 2) In sale situations the right of first refusal for a period of 60 days may eliminate some purchase offers particularly if a significant good faith earnest money deposit is required. Possibly the right of first refusal period could be shortened from 60 days to 30 days or the immediately preceding owner could be required to compensate the bidder for any opportunity costs (interest on monies that were required as a deposit as a condition of a bid).

While these concerns may not be viewed as substantial by non-lenders, they do adversely impact a single-industry lender already suffering economic distress due to the adverse financial conditions of many of its borrowers. However, in the case of individuals who reacquire property through foreclosure action, such concerns would be even more significant.

Testimony, Montana State S.B. 142

March 13, 1987

Page Two

We believe that Farm Credit Services' position of non-opposition with an indication to the committee of the impediments created for real estate property transactions is a responsible position, and we commend the draftors of the bill for their efforts in attempting to provide assistance to farmers and ranchers and at the same time drawing the bill tight enough to attempt to deal with lenders' concerns.

af



MONTANA
ASSOCIATION
OF REALTORS®

DATE 3/13/87
SB 142
Meeting

910 HELENA AVENUE
HELENA, MONTANA 59601
TELEPHONE: (406) 443-4032
IN MONTANA CALL TOLL FREE
1-800-421-1864

SB 142

3/13/87

HOUSE AGRICULTURE COMMITTEE

The Montana REALTORS® are cognizant of the critical problems facing Montana's agricultural community. We must oppose SB 142, however, for the following reasons:

This bill, in effect, adds yet another 60 days to the one-year redemption period which already exists for property owners to redeem property which has been foreclosed. It does it in a way which may have serious impact on the sale of that foreclosed property to a subsequent buyer. The 60 day period does not begin until there is a buyer who has made an offer on that property -- at that point the former property owner has 60 days in which to meet that offer. This is so despite the fact that he has been unable to redeem that property for the last 365 days.

Under the terms of this bill, a prospective purchaser is unable to act - any transaction is stopped while the individual who has been unable to meet mortgage or tax obligations and, as much as five years after foreclosure, attempts to finance the repurchase of the property.

The purpose of the redemption period is to allow the defaulting owner the opportunity to do just that - redeem his property from foreclosure. If he has been unable to do that, how will he be able to purchase the property?

SB 142 diminishes the position of a bona fide purchaser, inhibits the negotiating process, and makes the property less marketable. In addition, it places an additional risk on lending institutions, thereby eroding the credit system and perpetuating the poor operator at the expense of the good operator.

The MONTANA ASSOCIATION OF REALTORS® recommends a DO NOT PASS on SB 142.

EXHIBIT 212
DATE Mar. 13, 1987
SB 142 - Sen. Cail
Wading

WITNESS STATEMENT

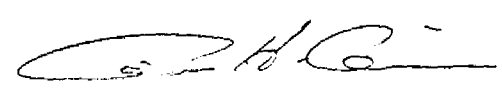
NAME Tim Gill BILL NO. SB 142
ADDRESS 4065 Florence Dr. Helena MT DATE 3/13/87
WHOM DO YOU REPRESENT? Montana Livestock Ag Credit
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

As President of this entirely shareholder owned corporation I speak for over 200 Agricultural producers in Montana. I'm not sure our organization would even be included as the bill presently reads, but still believe it discriminates among lenders and particularly against the many remaining viable producers.

No matter what the support says, we can already see a reduction in R/E credit, and ~~there~~ this type legislation will leave our organization no alternative but to avoid any future R/E backed loans.



March 13, 1987
SB
S.B. 142 - Sen. Cecil
Skeddy

Warren H. Ro
Donald T. Ro
406-357-2746

ROSS 8-7-RANCH, INC.

COMMERCIAL HEREFORDS SINCE 1887

S.B. 142 is one of several bills that have been introduced this session which would compromise agricultural loan contracts. This Bill would limit the lenders chance of getting legitimate lease or purchase bids.

I feel S.B. 142 gives to the borrower the same relief that Chapter 12 provides without the restrictions of filing for bankruptcy. A highly leveraged person, who is making all of his payments and cash flowing could demand that his land debt be written down or he would voluntarily give up title and then use this Bill to step back in and reclaim it. I don't believe an individual should be able to unilaterally change the terms of the contract. This Bill addresses only the uncooperative borrower - the legitimate borrower, who is a good operator and making an honest effort to meet his contracted responsibilities, will find most lenders willing to work out any reasonable plan. It is in the lenders best interest to keep the borrower on the place if he is trustworthy and a competent operator.

The additional restrictions being legislated that compromise the lenders ability to service and administer agricultural contracts (loans) will and are adversely affecting the availability and terms of credit for our legitimate operators. Our people are having trouble getting needed loans - not because of a lack of available funds - but because

lenders are not sure that they can or will be able to insure the safety of the depositors money used to make agricultural loans. Most commercial lenders in Montana are less that 55% loaned when good business levels would suggest 65% to 70%.

If you feel that his Bill must be put on the books I would respectfully suggest it at least be amended in Section two, line eight, strike the words or otherwise. This would require legal foreclosure and preclude the individual from unilaterally implementing its provisions. In section five - recording required - set the fee for filing of the notice at \$100.00. This would maybe preclude nuisance or spite filings.

Warren Ross
Chairman, MS6A
Ag Credit Committee



SB 142 - Pen Cattle
Weeding

P. O. Box 1679
Helena, Montana 59624
(406) 442-3420

March 13, 1987

We are opposed to SB 142 because of the adverse effects that it could have on the agriculture borrower who is struggling to obtain operating funds.

The Agriculture Economics Department of North Dakota has done a study of laws in that state that protect delinquent farm borrowers, showing that these laws have cost the state's lending institutions \$172.2 million dollars. The result of this is that it has caused the other borrowers the problems of (1) lower capital availability, (2) higher interest rates, and (3) stiffer requirements by the lending institutions.

I am enclosing a copy of that report with my testimony.

We believe that SB 142 would adversely effect those of us in Montana Agriculture who are trying to maintain creditability with our lending institutions, and we strongly urge that you reject this bill.

Carol Mesher

Everyone Pays for \$172 Million Loss

Study Shows ND Laws Hurting Farm Lenders

North Dakota laws that protect delinquent farm borrowers have cost the state's lending institutions \$172.2 million and are causing nondelinquent farm borrowers to pay higher interest rates, according to a study by the agricultural economics department of North Dakota State University.

The study also indicates that state credit laws are only of short-term benefit to the delinquent borrowers whom they are designed to protect.

"Delinquent farm borrowers usually benefit from a deferral or partial repayment, but not sufficiently to alter the financial course of their farm business in the future," says Cole Gustafson, one of the NDSU agricultural economists who did the study.

"At the same time," says Gustafson, "the laws which allow deferrals and partial repayments do have a significant negative impact on many people: interest rates offered to nondelinquent farmers are 1.5 percentage points higher than if such laws did not exist."

As a result of these higher rates, Gustafson says, farm borrowers who wish to maintain profit margins must assume riskier investments as well as riskier methods of production - and both of these increase the likelihood that they too will become delinquent borrowers.

Other effects of the state's agricultural credit laws, according to the study:

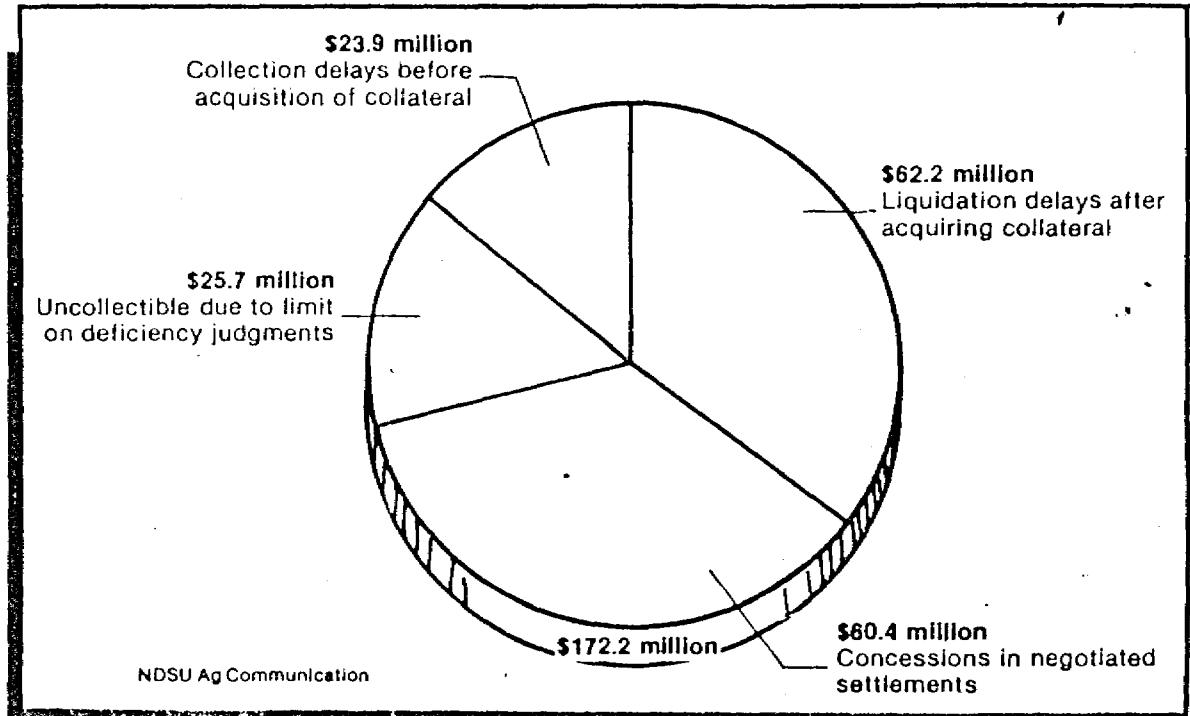
lower capital availability in North Dakota, higher charges for financial services, and stiffer loan requirements by lending institutions.

David Saxowsky, agricultural economist at NDSU, says that state laws protect debtors by delaying lenders in the collection and disposal of collateral, and also by limiting the amount that creditors can collect.

Of the \$172.2 million that impact such laws have had on lenders, the study attributes \$23.9 million to collection delays before collateral is acquired and \$62.2 million to delays after it is acquired. It attributes \$60.4 million to concessions made in negotiated settlements to avoid legal proceedings. Finally, it attributes \$25.7 million in debt that cannot be collected because North Dakota law limits deficiency judgments.

"In most states," says Saxowsky, "it is possible for a lender to foreclose, to regain control of the foreclosed property in a relatively short time, and afterwards to sue for deficiency payments if proceeds from the sale did not fully pay the debt. In North Dakota this is not the case."

On the contrary, he says, in North Dakota a buyer can request that terms of the original contract be rewritten in his favor, and in most cases can expect the creditor to agree. If the creditor refuses, the buyer may first delay or refuse payments, then hold possession of



Economic impact on North Dakota credit institutions of delayed and partial repayment of agricultural debt, based on delinquent loans as of July 1, 1986 and negotiated settlements from January 1, 1985 to July 1, 1986.

the land for at least one year after the creditor starts legal proceedings to regain it.

During this entire period the debtor may continue to farm the land, but is not required to make any payments on it or pay any taxes on it.

In the end, says Saxowsky, the creditor will get the land back, but

no more than that. The costs of a jury trial, of lost income from the land during the period of litigation, of back taxes not paid by the debtor - all this must be borne by the creditor.

In addition, points out Saxowsky, the lost value of the land can never be recovered by a seller who sold land when it was

valued at \$1,200 an acre and must take it back when its value has decreased to \$700.

Mortgagee in Escrow

SB 142 - *See Bill*
Reading

DEPARTMENT OF STATE LANDS
TESTIMONY FOR SB 142
House Agricultural Committee
(March 13, 1987, Room 317, 1:00 p.m.)

After reading SB 142 it was uncertain to the Department of State Lands how the Bill would affect school trust lands that are currently being leased for agricultural purposes. At the present time many of these leases are mortgaged by the lessee. On occasion the mortgage companies will foreclose on the mortgage and therefore, they may become the lessee of record. During the last year or two, this has become quite common. Oftentimes this is accomplished by placing an assignment, signed by the lessee, in escrow, and upon foreclosure, the assignment is presented to the Department of State Lands. The Department must generally then approve the assignment.

SB 142 seems to say that the state land must be offered to the former lessee by the mortgage company. However, under current state law governing the management of state lands, the mortgage company can not allow the former lessee to farm the land unless there is an approved assignment or sublease from the Department. SB 142 does not seem to account for this requirement as presently written. SB 142 seems to cause confusion as to which party is the actual lessee of record, and it places the leasehold in a tenuous position. Therefore, in order to keep the two sets of laws consistent, the Department offers this amendment to exempt school trust lands.

Amendment to SB 142; Third Reading - Blue Copy

1. Page 2.

Following: line 24

Insert: "(4) This section does not apply to agricultural land if such land is owned by the state pursuant to Montana's Enabling Act (Act of February 22, 1889, ch. 180, 25 Stat. 676)."

Agriculture, Livestock, & Irrigation Committee
March 27, 1987
Page five

Rep. Cody addressed Rep. Ellison's concerns. They aren't going to make loans to just anybody. They have to have their incubator money. They have a whole list of criteria. She thinks there are some built-in protections as far as the loan is concerned. The loan on the repayment it considers commensurate with the risk of its investment. They can develop its payback.

Rep. Ellison said when you risk loan capital with experienced companies they figure on about half the projects not going. Whether these people would have experience enough to do that well is problematical. The banks have criteria when they loan ranchers money and they have had to eat a lot of those loans too, and this risk capital is not too good.

Rep. Giacometto wanted to make sure that that counsel is good. He felt Reps. Rapp-Svrcek, Ellison, and Campbell did well on the committee.

After discussion, the committee ADOPTED the amendments proposed with Reps. Campbell, Ellison, and Holliday voting no.

Rep. Giacometto moved HB 889 DO PASS AS AMENDED WITH THE STATEMENT OF INTENT attached. Rep. Holliday seconded the motion and it was ADOPTED with Rep. Ellison voting no.

SENATE BILL 142

Rep. Corne' moved that the committee reconsider its action on Senate Bill 142. This was not necessary since nothing had been done definitely by the committee before. Rep. Corne' then moved SB 142 BE CONCURRED IN. Rep. Rapp-Svrcek seconded the motion. After discussion, the motion FAILED with 9 voting no and 8 yes. The motion was reversed to BE NOT CONCURRED IN AS AMENDED. The motion was discussed.

Rep. Cody asked what the amendments do. Rep. Rapp-Svrcek told her the Weeding amendment exempted state lands. Rep. Patterson said his amendments took language from the agriculture loan authority laws that particularly define what an owner is. Rep. Ellison's amendment more clearly defined what agriculture land is.

Rep. Corne' said the primary purpose for wanting to see this bill pass out of committee is that the bill's intention is to give people who have fallen on tough times and had their land repossessed an opportunity to come forward to attempt to purchase and use that land. He disagrees with the banks in opposition to the bill that perhaps these people are not good farmers.

144

Agriculture, Livestock, & Irrigation Committee
March 27, 1987
Page six

Maybe some of these people are living or operating on loans that were based on land that was overpriced and couldn't meet those obligations because of the poor economic times, acreage fixing, low markets, poor prices and they ought to have an opportunity to renegotiate and keep the land.

Rep. Giacometto remarked this is an emotional issue on both sides. The banks are opposed to it, but all the agriculture people are against it too and these are the people we are trying to help. The grassroots all the way up are opposed to it.

Rep. Bachini disagreed with Rep. Giacometto. He's gotten a lot of phone calls, messages on this issue from farmers. The organizations do represent a lot of the people, but a lot of the people's voices are not heard.

Rep. Compton said the MACO chairman of the agriculture committee told him that MACO is 100% in favor of the bill and he wanted me to know that before any action was taken on the bill.

SENATE JOINT RESOLUTION 15 is to be sent to the committee. It is to encourage the federal government to loan farm credit services help.

ADJOURNMENT

There being no further business to come before the committee, the meeting was adjourned.

Rep. Duane W. Compton
Chairman

DAILY ROLL CALL

AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 27, 1987

NAME	PRESENT	ABSENT	EXCUSED
Rep. Duane Compton, Chairman	.		
Rep. Loren Jenkins, Vice Chairman	✓		
Rep. Bob Bachini	✓		
Rep. Bud Campbell	.		
Rep. Dorothy Cody	.		
Rep. Richard Corne'	.		
Rep. Gene DeMars	.		
Rep. Orval Ellison	.		
Rep. Leo Giacometto	.		
Rep. Marian Hanson	.		
Rep. Harriet Hayne	.		
Rep. Gay Holliday	.		
Rep. Vernon Keller	.		
Rep. Francis Koehnke	.		
Rep. John Patterson	.		
Rep. Bing Poff	.		
Rep. Paul Rapp-Svrcek	✓		

March 27

19 27

Mr. Speaker: We, the committee on AGRICULTURE, LIVESTOCK & IRRIGATION

report SENATE BILL 142

☐ do pass
☐ do not pass

☐ be concurred in
☒ be not concurred in

☒ as amended
☐ statement of intent attached

REP. DUANE W. COMPTON Chairman

RIGHT OF FIRST REFUSAL ON SALE OF FORECLOSED AGRICULTURAL LAND

Be Amended as Follows:

1. Title, line 3.
Following: "PROVIDING"
Insert: "AN APPLICABILITY DATE AND"
2. Page 1, lines 14 and 15.
Following: "means" on line 14
Strike: remainder of line 14 through "15-7-202" on line 15
Insert: "real property that is principally used for the production of livestock, poultry, field crops, fruit, or other animal or vegetable matter for food or fiber"
3. Page 1, lines 23 and 24.
Following: "LENDER," on line 23
Insert: "or"
Following: "AGENCY," on line 24
Strike: remainder of line 24 in its entirety
Insert: "that"
4. Page 2, line 1.
Strike: "OR TRUST INDENTURE"
5. Page 2, line 10.
Following: "owner"
Insert: "if such owner has financial resources and farm management skills and experience to assure a reasonable prospect of success in the proposed farming operation. The offer to sell or lease land to the immediately preceding owner must be"
6. Page 2, line 25.
Following: line 24
Insert: "(4) This section does not apply to foreclosed agricultural land if such land is owned by the state pursuant to Montana's Enabling Act (Act of February 22, 1889, ch. 180, 25 Stat. 676)."

(Continued)

Third reading copy (Blue)
color

March 27

19 8

7. Page 4, line 21 through line 6, page 5.

Strike: section 5 in its entirety

Insert: "Section 5. Applicability. This act applies to agricultural land acquired by foreclosure or by judgment in satisfaction of debt after the effective date of this act."

Penumber: subsequent sections

ROLL CALL VOTE

AGRICULTURE, LIVESTOCK & IRRIGATION

COMMITTEE

DATE Mar. 27, 1987 BILL NO. SB 142

NUMBER 1

NAME	AYE	NAY	ABSTAIN
Rep. Duane Compton, Chairman		✓	
Rep. Loren Jenkins, Vice Chairman		✓	
Rep. Bob Bachini	✓		
Rep. Bud Campbell		✓	
Rep. Dorothy Cody	✓		
Rep. Richard Corne'	✓		
Rep. Gene DeMars	✓		
Rep. Orval Ellison		✓	
Rep. Leo Giacometto		✓	
Rep. Marian Hanson	✓		
Rep. Gay Holliday	✓		
Rep. Vernon Keller		✓	
Rep. Francis Koehnke		✓	
Rep. John Patterson		✓	
Rep. Bing Poff	✓		
Rep. Paul Rapp-Svrcek	✓		
Rep. Harriet Hayne		✓	

TALLY

8

9

Jo Lahti
Secretary

Duane H. Compton, Jr.
Chairman

MOTION: Do Concur As Amended on SB 142